

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ART+COM INNOVATIONAL POOL,) Trial Volume 6
GmbH,)
Plaintiff,)
v.) C.A. No. 14-217-RGA
GOOGLE INCORPORATED,)
Defendant.)

Friday, May 27, 2016
8:35 a.m.
Courtroom 6A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE TIMOTHY B. DYK,
United States District Court Judge

APPEARANCES:

FARNAN LLP
BY: BRIAN E. FARNAN, ESQ.
BY: MICHAEL J. FARNAN, ESQ.

-and-

BAKER & BOTTS
BY: SCOTT F. PARTRIDGE, ESQ.
BY: MICHAEL A. HAWES, ESQ.
BY: LARRY G. SPEARS, ESQ.
BY: TIMOTHY ROONEY, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

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3
4 MORRIS, NICHOLS, ARSHT & TUNNELL
5 BY: JACK B. BLUMENFELD, ESQ.

6 -and-

7 O'MELVENY MYERS, LLP
8 BY: DARIN SNYDER, ESQ.
9 BY: LUANN L. SIMMONS, ESQ.
10 BY: BRETT WILLIAMSON, ESQ.

11 Counsel for the Defendants
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1 THE COURT: Be seated, please.
2 For the record, counsel and the Court met for an
3 informal charge conference yesterday afternoon
4 which was very productive. And the parties sent
5 me this morning a joint proposed draft of final
6 jury instructions with the three remaining
7 issues to be resolved and this is your
8 opportunity to make formal objections as
9 required by Rule 51 as to the jury instructions.

10 Now, two objections don't need to
11 be made. To the extent that you reserve
12 objections to the Court's claim constructions,
13 those don't need to be raised here this morning.
14 Those are preserved. And I understand that ACI
15 has objected to the 2005 hypothetical
16 negotiation date arguing instead for a 2010 date
17 it. That objection is preserved and need not be
18 repeated this morning.

19 And turning to the proposed write
20 up the parties sent me last night, of the final
21 jury instructions, I think there are two things
22 which I need to rule on here. One of them is on
23 Page 25 and we'll make a copy of this and attach
24 it to the transcript as Court's Exhibit B.

1 There was a Google proposal and an ACI proposal
2 on this page and here's what I propose to do, is
3 to have two sentences which would be, the
4 evidence concerning Google's revenues or
5 financial projections from after 2006 is not
6 material to and cannot be considered for the
7 purpose of determining the royalty rate. ACI's
8 financial proposals after 2006 may be given less
9 weight for determining a reasonable royalty
10 period.

11 Now, is there any objection to
12 that resolution?

13 MR. PARTRIDGE: Yes, Your Honor.
14 Our objection is to the inclusion of the -- of
15 these sentences at all, which I think was
16 discussed previously. We think that the
17 inclusion here of a suggestion of less weight is
18 not appropriate. We also don't agree that the
19 date should be after 2006. Your Honor's already
20 ruled the hypothetical negotiation date is in
21 July of 2005. I don't think we should be making
22 distinctions between 2006 versus any other
23 years. If we're going to have an instruction
24 like this, it ought to be pegged to the

1 hypothetical negotiation date as we've
2 suggested. So those are the two remaining
3 problems we have. Well, I guess three, we don't
4 think it's required at all. Two, we don't think
5 that the date should be July of 2006 and we
6 think that less weight is not an appropriate
7 instruction. That's our view of this, Your
8 Honor.

9 THE COURT: Okay. Google.

10 MS. SIMMONS: Good morning, Your
11 Honor. Google does not object to the first
12 sentence that Your Honor proposed to the
13 instruction. As to the second sentence
14 regarding the ACI financial proposals, Google
15 objects to that instruction on the basis that
16 the ACI financial proposals after 2006 should be
17 given no weight as opposed to less weight. The
18 hypothetical negotiation has been set by Your
19 Honor as 2005. Information concerning in
20 particular an e-mail from November of 2010 is
21 five years after the date, and therefore should
22 not be considered for the purpose of determining
23 a royalty rate. In addition the 2010 e-mail was
24 offered by Mr. Mayer, who testified at the trial

1 that he has no experience with licensing and
2 that the e-mail related to a typical licensing
3 model and Mr. Mayer admitted that Google Earth
4 was not a typical product. Therefore Google
5 objects on the basis that admitting the e-mail
6 for any purpose and determining a royalty rate
7 would be highly prejudicial and is not relevant
8 to the proper determination of damages.

9 THE COURT: Okay. Well, seems as
10 though I've made both parties unhappy, so maybe
11 I'm about right. I'm going to overrule both of
12 those objections.

13 And then the one remaining issue
14 is on Page 30 here and you've given me competing
15 proposals. I'm going to adopt the Google
16 proposal, so the first sentence would read -- I
17 mean, I'm sorry, not the Google proposal, the
18 ACI proposal. So that the first sentence would
19 read, ACI seeks to recover damages reflecting
20 the alleged value that Google Earth contributes
21 to Google's profitability.

22 Does Google object to that?

23 MS. SIMMONS: Yes, Your Honor.

24 Google objects to that proposal or that

1 instruction on the basis that there's been no
2 evidence or expert testimony that Google Earth
3 contributes to Google's profitability. In fact,
4 there's been no evidence regarding what Google's
5 profitability actually is. The jurors will be
6 left to speculate as to that profitability based
7 on general knowledge about Google as a company.
8 Therefore we believe it's an improper
9 instruction regarding the proper determination
10 of damages and would be highly prejudicial to
11 Google.

12 THE COURT: Okay. That objection
13 is overruled.

14 MR. PARTRIDGE: Your Honor, if I
15 may with respect to this?

16 THE COURT: Yeah.

17 MR. PARTRIDGE: To preserve our
18 record as discussed previously. We object to
19 the repeated references to revenue in this
20 instruction given that the products that are at
21 issue are free, largely free products. So we
22 have an overall objection to this instruction on
23 that basis. We appreciate Your Honor's, I
24 think, from our standpoint, improvement of the

1 instruction with the decision this morning. And
2 we do have one other objection that didn't get
3 into the red line late last night at midnight.

4 THE COURT: Well, hold on a
5 moment. I thought that the proposal that you
6 were -- the joint proposal I had from the
7 parties was a proposal that everything was
8 agreed with the exception of these items which
9 you listed as the disagreements. You're now
10 telling me that this agreement goes beyond
11 things that were noted in the draft?

12 MR. PARTRIDGE: I'm just saying,
13 Your Honor, with respect to this instruction, I
14 think as we've discussed previously the repeated
15 references to revenue in this situation we're
16 objecting to. We accept the Court's decision to
17 go with this instruction and so we made a
18 proposal to fix one part of it, but we do have
19 an objection to the instruction overall.

20 THE COURT: I think if you had an
21 objection to the rest of the instruction you
22 should have noted it in this draft if that was
23 the purpose of the draft. But to the extent
24 that you're making objection that goes beyond

1 the draft, then in this respect it's overruled.

2 MR. PARTRIDGE: Understood, Your
3 Honor. And the one error that was made, if I
4 may, concerns instruction 13. And as
5 previously -- I'll wait until you get there,
6 Your Honor. This concerns whether or not a
7 public use must be informed and we had requested
8 the insertion of a sentence along the lines of
9 if members of the public are not informed of and
10 cannot readily discern the plain features of the
11 invention in the alleged system, the public use
12 has not been put in possession of those features
13 and we cite to Day versus Synovium and other
14 Federal Circuit cases to support that additional
15 sentence being added to that instruction.

16 THE COURT: I agreed that that
17 objection was preserved and I think that's not
18 consistent with the Supreme Courts decision in
19 Egbert and the way its been construed in later
20 Federal Circuit cases, so I'm going to overrule
21 that objection and I'll probably, at some later
22 time, have a written order about that.

23 MR. PARTRIDGE: Very well, Your
24 Honor. Thank you.

1 THE COURT: So I understand that
2 now with the exception of the things that have
3 been formally raised here today and the claim
4 construction objections that were preserved and
5 the objections of the 2005 hypothetical
6 negotiation date, there is no other objection to
7 these instructions; is that correct?

8 MR. PARTRIDGE: That is correct
9 from plaintiff's standpoint, Your Honor.

10 MS. SIMMONS: Your Honor, no
11 further objections from Google.

12 One small point of clarification
13 stemming from Your Honor's instruction that all
14 parties preserve their claim construction
15 positions, that extends to the instruction that
16 indicates that Google does not dispute that
17 certain claim limitations are met, that is based
18 on the current claim constructions.

19 THE COURT: Right. You're
20 preserving your objections to the claim
21 constructions, and by agreeing in the final jury
22 instructions that Google satisfies particular
23 limitations, you are not giving up your
24 objection to the claim construction.

1 MS. SIMMONS: Yes, Your Honor.

2 Thank you for that clarification.

3 THE COURT: Now, that brings us to
4 the verdict form. And I propose to work from
5 the ACI verdict form which you sent me this
6 morning. And again, for clarity, I suggest I'll
7 mark this as Court Exhibit C.

8 Obviously ACI proposed these. I'm
9 inclined to accept ACI's proposal to have
10 separate questions on anticipation and
11 obviousness. It does make the verdict form a
12 bit confusing, but nonetheless I understand why
13 they would want to do that.

14 I do think a couple of changes
15 need to be made in the ACI proposed form. If
16 you look at question three, I think that
17 referring to the TerraVision system anticipates
18 without more could be confusing to the jury, so
19 I think there should be a parenthetical there
20 that it constitutes a prior public use of. Is
21 there any objection to that change?

22 MR. PARTRIDGE: No, Your Honor.

23 MS. SIMMONS: Not to that change,
24 Your Honor.

1 THE COURT: And then in question
2 four, I don't think the jury should be asked to
3 answer the obviousness question if it's already
4 found anticipation because I think that will be
5 confusing to them. So I propose to modify the
6 introduction to question four to say if you have
7 answered yes to question two and no to question
8 three, you find that Google has proven.

9 Is there any objection to that
10 change?

11 MR. PARTRIDGE: My only concern
12 about -- my concern, Your Honor, is not having a
13 resolution of that issue for potential appeal
14 purposes. I'm just thinking through -- I mean,
15 if they answer that it anticipates, I see your
16 problem, I think I understand what you're
17 saying, if they say it anticipates, under the
18 law it is not necessarily obvious.

19 THE COURT: It's very confusing to
20 them if you tell them to go on and decide the
21 obviousness question.

22 MR. PARTRIDGE: I see your point.
23 I think that is an appropriate addition to that
24 question.

1 THE COURT: Does Google have any
2 objection to that?

3 MS. SIMMONS: No, Your Honor.

4 THE COURT: And then in question
5 seven, same change, if you answered yes to
6 question five and no to question six, so again,
7 they're not asked to go on and decide the
8 obviousness question with respect to claims 1,
9 14 and 28 if they have already found them
10 anticipated. Is there any objection to that
11 change?

12 MR. PARTRIDGE: No, Your Honor.

13 MS. SIMMONS: No, Your Honor.

14 THE COURT: And with those
15 changes, is there any objection to the verdict
16 form?

17 MR. HAWES: Your Honor, you might
18 want to do the same with question number eight
19 as you did with question number seven.

20 THE COURT: No, I don't think so,
21 because with respect to question eight there is
22 no anticipation -- with respect to claim 3 there
23 is no anticipation question.

24 MR. HAWES: I'm sorry, Your Honor.

1 You're correct. Yes.

2 MR. PARTRIDGE: To answer your
3 question, Your Honor, no objection to the
4 changes made.

5 MS. SIMMONS: Your Honor, just for
6 purposes of preserving the record, Google
7 objects to splitting the question out into two
8 as we believe it will be prejudicial to Google
9 and confusing to the jury.

10 THE COURT: Why prejudicial?

11 MS. SIMMONS: Because it ends up
12 with one question for infringement and I believe
13 it ends up being eight questions for invalidity.
14 And the concern is that the jury will have more
15 work to do on the invalidity case and that could
16 negatively impact their resolution of the issues
17 for Google.

18 THE COURT: That's overruled.

19 MS. SIMMONS: Thank you.

20 THE COURT: When I gave you the
21 draft last night, I put it in large type so I
22 could read it. You have shrunk the type. What
23 I'm going to ask my clerk to do is to make the
24 changes that I made this morning and print out a

1 large type version which would be the one that I
2 would read to the jury. And also it would be
3 the same one that the jury would take back with
4 it for its deliberations. And I'll ask them to
5 make the changes that we talked about this
6 morning to the verdict form, also.

7 Do you need time to make those
8 changes or have those been done already?

9 What I'm going to do is I'm going
10 to give each of you a copy of the new verdict
11 form with the changes that we just talked about,
12 and the final jury instructions with the changes
13 we talked about at recess for ten minutes or
14 something, give you a chance to make sure that
15 there isn't some glitch in here. And then we'll
16 call the jury back and I'll give the jury
17 instructions.

18 MR. PARTRIDGE: One point of
19 information for you, Your Honor. There have
20 been I believe some outstanding objections to
21 closing slides, demonstratives that we need to
22 discuss with you at some point before the jury
23 comes in as well.

24 THE COURT: How long is that going

1 to take?

2 MR. ALMELING: Not very long at
3 all. Less than five minutes.

4 THE COURT: Can we sort of double
5 track this? Can someone check the verdict form
6 and final jury instructions while we're
7 considering the objections?

8 MR. PARTRIDGE: Yes, Your Honor.

9 MR. ALMELING: Yes, Your Honor.

10 THE COURT: So hold on for a
11 moment on the objections. I'm going to ask my
12 clerk to pass out the revised verdict form and
13 the jury instructions and let's call the verdict
14 form Court Exhibit D and the final revised jury
15 instructions as Exhibit E. And I think we have
16 two copies for each side. And come back and let
17 us know if there is any glitch in here that
18 needs to be corrected. Okay.

19 MR. ALMELING: Thank you, Your
20 Honor. Google has two concerns with plaintiff's
21 opening. Instead of discussing this in
22 abstract, it would be useful to show the slides
23 if that would be helpful to Your Honor.

24 THE COURT: Please.

1 MR. ALMELING: The first issue
2 relates to a series of slides beginning at slide
3 five. This is the issue of ACI's improper
4 suggestion of copying which has been addressed
5 partly by this trial so far, but I wanted to lay
6 this out in the closing as it's being done.

7 Slide five itself is not
8 objectionable, it refers to who was at SGI in
9 1995.

10 Next slide.

11 Then there's a plan
12 to show this, which shows Mr. Mayer giving a
13 demonstration of the T_VisionVision system.
14 This was not given to SGI in 1995 and during the
15 meet and confer process ACI has agreed to remove
16 the title to avoid that suggestion, but it's
17 still in the slide and in that order.

18 Next slide. Then ACI plans to
19 suggest that these people that were at ACI and
20 presumably saw a demonstration or at least part
21 of a demonstration, next slide, moved to
22 Intrinsic Graphic and ostensibly took with them
23 whatever they learned at SGI including their
24 knowledge of the demonstration, next slide, then

1 to Keyhole. Next slide, and that cumulative
2 information is now funneled into Google.

3 During opening presentation, a
4 similar series of slides was presented
5 purportedly to suggest the context of the
6 parties' negotiations to aid the jury. That
7 context is no longer necessary, because the jury
8 understands the connections between the parties
9 and the only use of this is therefore for the
10 improper suggestion that they learned of the
11 demonstration, took what they learned through a
12 series of companies and then brought into
13 Google, i.e., the copying issue.

14 THE COURT: Could you go back one
15 slide?

16 MR. ALMELING: Yes, Your Honor.

17 THE COURT: Or maybe one other
18 one. That's one that has an X on it. What's
19 that at the bottom?

20 MR. ALMELING: I believe that is
21 an X through the Intrinsic. I'm not sure why
22 the X is there.

23 MR. HAWES: May I comment, Your
24 Honor.

1 THE COURT: Yeah.

2 MR. HAWES: We actually agreed to
3 get rid of these slides because Mr. Birch was
4 not in our opening slides, so we've gotten rid
5 of the slides. All we plan to do is use the
6 slides we used in our opening so the jury knows
7 we're talking about the same things we talked
8 about before. We now have an instruction
9 specifically on the copying issue and not going
10 to show anything we didn't show in opening on
11 this issue.

12 MR. ALMELING: The objection is
13 the even though the word copying is not used,
14 this is meant to portray copying which is no
15 longer necessary for context.

16 THE COURT: I'm going to overrule
17 that and if they start suggesting copying, you
18 can rebut it and I may emphasize to the jury
19 that there is no issue of copying, so do stay
20 away from that, please.

21 MR. ALMELING: Thank you, Your
22 Honor. The second issue Google would like to
23 raise relates to Slide 54.

24 MS. SIMMONS: Your Honor, this

1 slide we understand from the meet and confer is
2 based on PTX-219, which is a document that talks
3 about AdSense revenue, that was admitted during
4 Mr. Nawrocki's direct. Google object and the
5 Court overruled. At that time we object to this
6 slide as being based on a document dated from
7 2010 and related to revenues from AdSense.
8 First of all, it's five years after the
9 hypothetical negotiation date and there's no
10 expert opinion or testimony that would link
11 AdSense revenue back to Google Earth or somehow
12 evidence that Google Earth contributed to any
13 AdSense revenues. And the figures obviously are
14 large and our concern is that this is
15 prejudicial and is being used for an improper
16 purpose.

17 THE COURT: Okay.

18 MR. HAWES: Your Honor, may I
19 actually pass up that document?

20 THE COURT: Yes.

21 MR. HAWES: So I'd start, Your
22 Honor, by just pointing out that as you can see
23 from the slide, there are no revenues numbers or
24 projection numbers here. This is an

1 apportionment issue. More importantly, if Your
2 Honor could turn to Page 2, it's a double-sided
3 document, if you look at the second full
4 paragraph there, Your Honor, and look at the
5 last sentence, you'll see this document is
6 specifically talking about an apportionment
7 breakdown that was effective in 2005.

8 THE COURT: Well, what's the
9 Google comment on that?

10 MS. SIMMONS: The main concern,
11 Your Honor, that as to any date, 2010 or 2005,
12 there is nothing in this document, nor is there
13 any expert testimony that links any AdSense
14 revenue to Google Earth. That's not in this
15 document, not in the paragraph that counsel just
16 pointed out.

17 THE COURT: Well, help me
18 understand what AdSense revenue is.

19 MS. SIMMONS: Revenue from the ad
20 program for Google Earth that's used as we heard
21 from testimony, not in Google Earth. It's used
22 in other Google products, and there's been no
23 expert testimony that says Google Earth
24 generates any of the AdSense revenue.

1 THE COURT: The AdSense revenue is
2 all of Google's advertising revenue for all
3 platforms?

4 MS. SIMMONS: I'm not sure it's
5 all platforms, but I am certain it's not for
6 Google Earth.

7 THE COURT: What is it, Mr. Hawes

8 MR. HAWES: Your Honor, we are not
9 using this at all for revenue. This is a
10 program that Google has where it splits the
11 value that Google adds and the value that the
12 customer receives and the expert testified that
13 this was the basis for determining an
14 apportionment to give Google credit for it's ad
15 program. We are not going to talk about any
16 revenue numbers.

17 THE COURT: I'm sorry, I'm not
18 following what's going on here. And it's hard
19 for me to rule on it if I don't understand
20 what's going on.

21 MR. HAWES: Fair enough, Your
22 Honor. So the AdSense program is a partnership
23 program where third parties can work with Google
24 to have ads on their website. So if I had my

1 own web --

2 THE COURT: On Google website?

3 MR. HAWES: No, actually on mine.

4 So I'm a third party and Google provides me with
5 software that allows me to show ads on my
6 website, but through Google's system. So it's
7 on my website but it goes through Google's
8 advertising them.

9 THE COURT: Okay.

10 MR. HAWES: And there's a share,
11 I'm not going to talk about the revenue numbers,
12 but there's a share that has been effective
13 since 2005 for how Google says here's your
14 portion of that, and here's our portion because
15 of our advertising platform.

16 THE COURT: What does that have to
17 do with the issues in this case?

18 MR. HAWES: It has to do with the
19 share that Google itself attributes to the value
20 its advertising platform provides. And that's
21 what Mr. Nawrocki testified as an expert, that
22 this helps him apportion because it shows what
23 Google believes its advertising platform is
24 worth as a share of revenue its providing. So

1 it's an important apportionment point that was
2 testified to by the expert and as the document
3 indicates was dated back to 2005.

4 THE COURT: What is the 49/51
5 percent share going to be attributed to?

6 MR. HAWES: It's going to be
7 attributed to the various numbers we've seen
8 that the jury may use in calculating its
9 royalty. We're going to say Google should get
10 credit for the percentage that Google itself has
11 determined is appropriate when you're using the
12 Google.

13 THE COURT: Are you suggesting
14 that Google Earth is responsible for 51 percent
15 of Google's total revenue?

16 MR. HAWES: No, Your Honor. This
17 is one step in I believe four steps of
18 apportionment that Mr. Nawrocki used. I mean,
19 this is certainly not a single step. And again,
20 we're not going to talk about their total
21 revenue or any revenues numbers, but there are
22 four steps of apportionment that are important
23 for the jury to hear because apportionment is
24 required by the jury instructions.

1 THE COURT: Why is this 49/51
2 percent apportionment from AdSense, what are you
3 arguing it can be used for?

4 MR. HAWES: It can be used by the
5 jury to adjust the rate to take into account the
6 apportionment that Google's advertising platform
7 deserves by Google's own program that shows how
8 much Google attributes to its advertising
9 platform as a percentage.

10 THE COURT: Ms. Simmons.

11 MS. SIMMONS: Your Honor, first of
12 all, Mr. Nawrocki talked about this document but
13 gave no opinion -- or not this document, I'm
14 sorry, the underlying document, but gave no
15 opinion as to how it should be used and second
16 and more important, as Your Honor, has
17 indicated, if you read PTX-219, and we can pull
18 it up if that's helpful, I believe counsel gave
19 you a copy. If you read through this documents
20 it relates to ads that publishers can put on
21 their own site and generate revenues from those
22 ads. It has absolutely nothing to do with
23 Google Earth and there has been no testimony or
24 evidence that it does.

1 THE COURT: Is there any testimony
2 Mr. Hawes?

3 MR. HAWES: Yes, Your Honor, there
4 is. Mr. Nawrocki testified that this was an
5 apportionment step that the jury could use to
6 determine a reasonable royalty. Your Honor --

7 THE COURT: Did he say something
8 about the AdSense document?

9 MR. HAWES: Yes, he did, Your
10 Honor.

11 THE COURT: Did he say something
12 about the AdSense document?

13 MR. HAWES: Yes, he did. He said
14 yes, our AdSense so we paid our AdSense for
15 search partners at 50 percent revenue per share,
16 that means if you do those activities its
17 partners would receive 51 percent, Google would
18 have a 49 percent, so roughly a split. That's
19 how he described his apportioning step based on
20 how he analyzed the underlying document. That's
21 all we're asking to show the jury exactly what
22 he testified. I'm not going to show them the
23 document, I'm not going to show them anything in
24 the document other than what he testified about.

1 THE COURT: I'm going to sustain
2 the objection. I think the way you're using
3 this could well confuse the jury and suggest
4 that this apportionment that's made in an
5 entirely different context somehow is between
6 Google and its third-party partners is somehow a
7 proper apportionment with respect to Google
8 Earth and other Google products, and it seems to
9 me it's quite remote from that.

10 MR. HAWES: I understand your
11 ruling, Your Honor.

12 MS. SIMMONS: Thank you, Your
13 Honor.

14 MR. SNYDER: Your Honor, there are
15 two other issues that are closely related to
16 what we have just discussed. The first relates
17 to an exhibit that is admitted. This is
18 Plaintiff's Exhibit 160. It is an SEC filing
19 from 2011, I believe, and it was admitted
20 without any redaction.

21 Now, like any SEC filing it
22 includes an enormous amount of information about
23 Google, the entire Google company including all
24 of its revenues and profits. It was referenced

1 by Mr. Nawrocki for one purpose, and that was to
2 identify generically the difference, the amount
3 of Google worldwide revenues that he attributes
4 to the United States.

5 But it would be enormously
6 prejudicial for plaintiff's counsel or for one
7 of the jurors to look at that document and
8 identify the very kind of information that is
9 prohibited to show the jury about the company's
10 total revenues when there is no connection to
11 any of the issues in this case.

12 THE COURT: Is there any reason,
13 Mr. Hawes that the document can't be redacted?

14 MR. HAWES: I thought we had
15 agreed to a redaction. I'm not sure what the
16 issue was.

17 MR. SNYDER: I wasn't aware there
18 was a response.

19 MR. HAWES: I'm sorry, we talked
20 yesterday. We had agreed to a redaction based
21 on a document they had submitted.

22 MR. SNYDER: That resolves the
23 issue and we'll submit the redacted version.

24 There is a related issue to that,

1 Your Honor. I am very concerned and I am more
2 concerned after this morning's conversation that
3 what plaintiff intends to do is to take their
4 \$7.1 billion session number and put some
5 gigantic proposed damages in front of the jury
6 when there is nothing to support that.

7 Mr. Nawrocki did not give a
8 damages opinion. He identified the number of
9 sessions and never gave an opinion about the
10 rate. He never gave an opinion about a proposed
11 reasonable royalty in his view. If they want to
12 identify a number of sessions, that's one thing,
13 but now what I fear they are going to do is take
14 that 2010 document that we objected to and some
15 suggestion of a ten cent per use rate, and put a
16 number of \$700 million in front of the jury.
17 And there is no basis for doing that given the
18 Court's rulings and given the evidence that's
19 been put forth in this case.

20 MR. HAWES: Your Honor, I am not
21 going to ask the jury for a \$700 million damage
22 award.

23 THE COURT: What are you going to
24 do with the ten cent figure?

1 MR. HAWES: All right. So you're
2 asking me for my closing, Your Honor?

3 THE COURT: Well, that's the issue
4 that's raised here.

5 MR. HAWES: And I answered the
6 issue, I'm not going to ask for \$700 million.
7 Yes, we're going to say that there is a typical
8 royalty rate that was put in that e-mail that
9 was admitted into evidence, we are going to
10 discuss various of the credit factors that
11 Mr. Nawrocki set forward, one less now, but
12 various of the factors that Mr. Nawrocki set
13 forward for giving credit to Google and we are
14 going to ask the jury to consider the evidence
15 in view of the royalty instructions that they
16 have received and let them know that there are
17 various options that they have for reaching a
18 reasonable royalty in this case in accordance
19 with the instructions.

20 I do not intend to put a \$700
21 million number or any number higher than the
22 number we originally had in this case as a
23 result of the ten cent in front of the jury.

24 THE COURT: I'm going to let you

1 -- this does seem to raise potential Rule 50
2 motion if you're successful here as to whether
3 there is sufficient evidence to support some of
4 these calculations, but I think I can't rule on
5 that in connection with to the closing argument.

6 MR. HAWES: Thank you, Your Honor.

7 MR. SNYDER: May I make one more
8 comment to try to put this in context?

9 Your Honor just ruled that a
10 portion of the apportionment scheme that they
11 wanted to use, the 49 to 51 percent, they cannot
12 use. I agree with that ruling and we all
13 understand that.

14 THE COURT: No, I didn't say they
15 couldn't argue for a 49 and 51 percent division,
16 I just said that they can't rely on this
17 document, the AdSense document because it's too
18 far afield and it's not relevant to making that
19 calculation.

20 MR. SNYDER: Thank you, for the
21 clarification, Your Honor. There is no evidence
22 for an apportionment of the -- that is the only
23 evidence that Mr. Nawrocki relied on. And there
24 is no other evidence on that issue. If we

1 pulled -- we know how this works. And if they
2 pull that piece out of the formula, one for
3 which there is no support, then the net effect
4 of that mathematically is it's going to double
5 the amount of damages that they're going to ask
6 for.

7 By taking a piece out, the net
8 effect is they're going to ask for more money
9 which is more prejudicial, not less prejudicial,
10 when the reason for removing it is that it is
11 irrelevant.

12 THE COURT: You're going to argue
13 there is no support for it. At the end of the
14 day if there is a Rule 50 motion necessitated
15 here, we can have briefing on whether there is
16 any support in the record for this. Mr. Hawes
17 runs the risk of that happening. But I'm going
18 to let the argument be made within the confines
19 of what we just discussed.

20 MR. SNYDER: Thank you, Your
21 Honor.

22 MR. HAWES: Thank you, Your Honor.

23 THE COURT: Is there anything
24 else?

1 MR. PARTRIDGE: Nothing from the
2 plaintiff, Your Honor.

3 MR. SNYDER: Nothing further, Your
4 Honor.

5 THE COURT: All right. Are we
6 ready to bring the jury back in for the closing
7 argument?

8 MR. PARTRIDGE: One --

9 THE COURT: Yes, we need to
10 determine whether your review of the verdict
11 form and final jury instructions showed any need
12 for a change.

13 MR. PARTRIDGE: It's okay with us,
14 Your Honor. I would request you would give us a
15 couple of minutes to adjust the slides in light
16 of Your Honor's ruling.

17 THE COURT: We'll do that.

18 MR. WILLIAMSON: I apologize, Your
19 Honor. I realized there is a housekeeping
20 issue. I have already addressed it with
21 plaintiff's counsel. Some of the exhibits and
22 there is one we have identified so far that were
23 not objected to in the pretrial order and that
24 were used with witnesses were not listed in some

1 of those post witness rollcall and the only one
2 we have identified now is the file history from
3 plaintiff's exhibit, it's PTX 5. There may be
4 others, we agreed if plaintiff identified those,
5 we won't object. I just move that into
6 evidence.

7 MR. PARTRIDGE: No objection, Your
8 Honor.

9 THE COURT: It's admitted.

10 And now Mr. Snyder, you have had a
11 chance to review the final jury instructions and
12 verdict form?

13 MR. SNYDER: We have, Your Honor.
14 And you conformed to the Court's rulings. We
15 have no further issues for them.

16 THE COURT: We'll wait a couple of
17 minutes to let you get set.

18 MR. HAWES: Can I ask for a
19 clarification, Your Honor?

20 THE COURT: Yes.

21 MR. HAWES: On your ruling with
22 regard to the AdSense, are you excluding the
23 demonstrative slide? We're trying to fix
24 closing right now, Your Honor. Are you

1 excluding the demonstrative slide or are you
2 excluding the article that was previously
3 admitted into evidence?

4 THE COURT: The article being PTX
5 0219?

6 MR. HAWES: Yes, 0219, that's
7 right, Your Honor.

8 THE COURT: Yes, I think this
9 document should be not only excluded as a
10 demonstrative, but based on further argument
11 stricken to the extent that it was admitted
12 earlier. I think it's too speculative, too
13 confusing. It raises a very serious 402
14 problem, very marginal reference and
15 significantly prejudicial.

16 MR. HAWES: Your Honor, are you
17 also striking the witness's testimony with
18 regard to Exhibit 219, the expert witness?

19 THE COURT: Yes.

20 MR. HAWES: I understand your
21 ruling. Thank you, Your Honor. And just for
22 the record, we do object to those being
23 stricken, but I understand your ruling.

24 THE COURT: Thank you.

1 Just one other matter before you
2 bring in the jury. Now that I've stricken PTX
3 0219 and the testimony with respect to that, is
4 there a need to inform the jury of that?

5 MR. SNYDER: I think it would be
6 appropriate to inform them, Your Honor, that
7 they have been taking notes. We have no idea
8 what portion of it is going to be relevant to
9 their determinations or not. And I don't know
10 how that issue is going to be handled at
11 closing.

12 THE COURT: It's not going to be
13 handled at closing, but is there a need to
14 inform the jury about that?

15 MR. HAWES: Your Honor, we don't
16 believe so. It shouldn't go back, obviously,
17 because you have excluded it so it wouldn't be
18 something the jury would have access to or
19 consider. We believe it would be prejudicial to
20 have the jury come in during closing and tell
21 them we're striking some of the plaintiff's
22 witness's testimony. This decision was
23 potentially made while the witness was on the
24 stand, but instead now we're here in closing and

1 the question is whether to tell the jury as
2 closing starts or even right after closing, I'm
3 striking a plaintiff's witness's testimony.

4 THE COURT: I'm inclined to agree.
5 It gives it too much emphasis. The exhibit
6 won't be available to the jury. There is not
7 going to be any reference to the testimony about
8 it. So I think to avoid further jury confusion
9 about that, I'm not going to mention it.

10 MR. SNYDER: I understand, Your
11 Honor.

12 MR. HAWES: I understand, Your
13 Honor.

14 THE COURT: All right. Are we
15 ready to bring the jury back?

16 MR. HAWES: The plaintiff is
17 ready, Your Honor.

18 MR. SNYDER: Yes, Your Honor.

19 (Jury entering the courtroom at
20 9:14 a.m.)

21 THE COURT: Good morning, members
22 of the jury. Thank you for your patience here.
23 Sorry to keep you waiting. Now comes the time
24 for the final stages of this case. I'm going to

1 give you final jury instructions and I'm going
2 to give you a verdict form which you should fill
3 out in your deliberations and then there will be
4 closing argument by each side and then you will
5 recess to deliberate. Unfortunately the final
6 jury instructions are somewhat lengthy, probably
7 going to take on the order of 45 minutes or
8 maybe even longer than that, so I ask you to
9 bear with me and to pay attention carefully
10 because these instructions must govern your
11 deliberations.

12 Now, members of the jury, you have
13 heard the evidence in this case and I'm going to
14 instruct you now on the law you must apply. And
15 a copy of these instructions will be available
16 to you during your deliberations. It's your
17 duty to follow the law as I describe it to you.
18 On the other hand, you, members of the jury, are
19 the judges of the fact or the facts and don't
20 consider any statement that I have made during
21 the trial or in these instructions as an
22 indication that I have a view about the facts of
23 the case.

24 After I instruct you on the law,

1 the attorneys will have an opportunity to make
2 their closing arguments. Statements and
3 arguments of the attorneys are not evidence and
4 are not instructions on the law. They are
5 intended only to assist you in understanding the
6 evidence and the parties' contentions.

7 As I mentioned, a verdict form has
8 be prepared for you. You will take this form
9 into the jury room and when you have reached a
10 unanimous agreement as to your verdict, you will
11 have your foreperson fill it in, date it and
12 sign it. Answer each question on the verdict
13 form in order based on the facts as you find
14 them. Your answers and your verdict must be
15 unanimous.

16 In determining whether any fact as
17 be proven in this case, you may, unless
18 otherwise instructed, consider the testimony of
19 all witnesses, regardless of who may have called
20 them, and all exhibits received into evidence,
21 regardless of who may have produced them. You
22 may also consider the parties' factual
23 stipulations. You have heard testimony and
24 viewed exhibits about some very technological

1 issues. The evidence at times may have been
2 difficult for non-experts such as yourself to
3 comprehend. In deliberating on a verdict, do
4 not be discouraged and do your best to
5 understand the testimony and exhibits that have
6 been presented to you. I think these
7 instructions and the closing arguments will help
8 you to understand the relevant issues and I have
9 great faith in your ability to reach a fair and
10 impartial verdict.

11 While you should consider only the
12 evidence in this case, you are permitted to draw
13 such reasonable inferences from the testimony
14 and exhibits as you feel is justified in the
15 light of common experience. In other words, you
16 may make deductions and reach conclusions that
17 reason and common sense lead you to draw from
18 the facts that have been establish by the
19 testimony and evidence in this case. The
20 testimony of a single witness may be sufficient
21 to prove any fact, even if a greater number of
22 witnesses may have testified to the contrary, if
23 after considering all other evidence you believe
24 that single witness.

1 Now, certain testimony as you
2 recall, has be presented through a deposition.
3 As I mentioned at the outset of the trial, a
4 deposition is the sworn, recorded answers to
5 questions asked of a witness before trial.
6 Under some circumstances, if a witness cannot be
7 present to testify from the witness stand, the
8 witness testimony may be presented, under oath,
9 in the form of a deposition. The deposition
10 testimony is entitled to the same consideration
11 as live witness testimony, and it is to be
12 judged by you as to credibility and weight and
13 otherwise considered by you insofar as possible
14 and treated the same as if the witness has been
15 present and had testified from the witness stand
16 in court.

17 You have heard comments and
18 questions from both sides concerning potential
19 witnesses who were not called to testify in this
20 trial. You should be aware that I have strictly
21 limited the amount of time available to each
22 side to present testimony, so that we could
23 conclude within the week and it was not possible
24 for the parties to call all witnesses who may

1 have relevant knowledge.

2 In determining the weight to give
3 to the testimony of a witness, you should ask
4 yourself whether there was evidence tending to
5 prove that the witness testified falsely
6 concerning some important fact, or whether there
7 was evidence that at some other time the witness
8 did or said something or failed to say or do
9 something, that was different from the testimony
10 the witness gave before you during the trial.

11 You should keep in mind of course
12 that a simple mistake by a witness does not
13 necessarily mean the witness was not telling the
14 truth as he remembers it, because people forget
15 some things and remember other things
16 inaccurately. So if a witness has made a
17 misstatement, you need to consider whether the
18 misstatement was an intentional falsehood or
19 simply an innocent lapse of memory and the
20 significance of that may depend on whether it
21 has to do with an important factor an
22 unimportant detail. Now, a witness may also be
23 discredited or impeached by contradictory
24 evidence such as testimony of other witnesses or

1 written documents received in evidence or
2 evidence that at some other time the witness
3 said or did something, or failed to say or do
4 something that was different from the testimony
5 he or she gave at trial. If you believe any
6 witness has been impeached and thus discredited,
7 you may give the testimony of that witness such
8 credibility, if any, as you think it deserves.

9 If a witness is shown knowingly to
10 have testified falsely about any material
11 matter, you have a right to distrust such
12 witness' other testimony, and you may reject all
13 the testimony of that witness or give it such
14 credibility as you may think it deserves.

15 Certain exhibits shown to you are
16 illustrations. We call these types of exhibits
17 demonstrative exhibits. Demonstrative exhibits
18 are a party's description, picture or model to
19 describe something involved from in this trial.
20 If your recollection of the evidence differs
21 from the demonstrative exhibit, rely on your
22 recollection. Both parties have presented
23 testimony of expert witnesses. When /-PBL of
24 technical subject matter may be helpful to the

1 jury, a person who has special training or
2 experience in that technical field, called an
3 expert witness, is permitted to state his or her
4 opinion on those technical matters. However,
5 you're not required to accept that opinion of
6 the expert. As with other witnesses, it is up
7 to you to decide whether to rely upon it. In
8 deciding whether to accept or rely upon the
9 opinion of an expert, you may consider any bias
10 of the witness, including any bias you may infer
11 from evidence that the expert witness has been
12 will be paid for reviewing the case and
13 testifying, and whether the expert supported his
14 opinion with sufficient evidence.

15 Now, by allowing testimony or
16 other evidence to be introduced over the
17 objection of an attorney, I will not indicate
18 any opinion as to the weight or effect of such
19 evidence. You are the sole judges of the
20 credibility of all witnesses and the weight and
21 effect of such evidence. When I sustained an
22 objection to a question addressed to a witness,
23 you must disregard the question entirely and may
24 draw no inference from the wording of it or

1 speculate as to what the witness who have
2 testified to, if he or she had been permitted to
3 answer the question.

4 As you've seen at times during the
5 trial, it was necessary for me to talk to the
6 lawyers here at the bench out of your hearing or
7 by calling a recess. We met because often
8 during a trial something comes up that doesn't
9 involve the jury. You should not speculate on
10 what was discussed during such times.

11 Now, I will first give you a
12 summary of each side's contentions in this case
13 and I will then tell you what each side must
14 prove to win on the issues. In this case ACI
15 contends that Google infringes claims 1, 3, 14
16 and 28 of the '550 Patent by using within the
17 United States certain Google Earth products and
18 the Google Maps with Earth feature. ACI asks
19 you to award damages for the infringement.
20 Google contends that the accused Google Earth
21 products do not infringe Claims 1, 3, 14 and 28
22 of the '550 Patent. Google contends that
23 certain steps of the claimed method are not
24 performed by Google or its software in the

1 accused Google Earth product. Google's contends
2 that claims 1, 3, 14 and 28 are invalid. Google
3 contends that at the time of the alleged
4 invention, there was already prior art that
5 performed or described every element of each
6 asserted claim, rendering the claims invalid.
7 As such, Google contends that ACI is not
8 entitled to any damages.

9 Your job is to decide which, if
10 any, of the accused claims have been infringed
11 and which, if any, of the asserted claims are
12 invalid. If you decide that any asserted claim
13 of the '550 Patent has been infringed and is not
14 invalid, you will then need to decide any money
15 damages to be awarded to ACI as compensation for
16 that infringement.

17 Now, in any legal action, facts
18 must be proved by a required amount of evidence.
19 The burden of proof in this case is on ACI for
20 some issues and on Google for others. ACI has
21 the burden of proving infringement and damages
22 by a preponderance of the evidence. Google has
23 the burden of proving invalidity by clear and
24 convincing evidence. As I told you, when a

1 party such as ACI has the burden to prove any
2 claim by a preponderance of the evidence, that
3 means that the evidence must persuade you that
4 the claim is more probable than not. When a
5 party such as Google has the burden of proving a
6 defense by clear and convincing evidence, it
7 means the evidence must produce in your mind a
8 firm belief or conviction that the claim or
9 defense has been proven. Although the clear and
10 convincing evidence standard is more rigorous
11 than preponderance of the evidence, it does not
12 require proof beyond a reasonable doubt as in
13 criminal cases. You may think of clear and
14 convincing evidence as being between the
15 preponderance and beyond a reasonable doubt
16 standards of proof.

17 As I told you at the beginning of
18 trial, the claims of a patent are the numbered
19 sentences at the end of the patent. The patent
20 claims describe the claimed invention made by
21 the inventor and describe what the patent owner
22 owns and what the patent owner may prevent
23 others from doing. Four claims are involved
24 here. These are set forth in your list of

1 claims and Court's construction of claim
2 terminology. They are claims 1, 3, 14 and 28,
3 which are claims to methods. These claims are
4 divided into parts called steps, requirements,
5 or limitations.

6 For example, a claim that covers
7 the invention of a method of building a table
8 may recite cutting a tabletop, carving four
9 legs, and gluing the legs to the tabletop.
10 Cutting the tabletop, carving the legs and
11 gluing the legs to the tabletop are each a
12 separate step of the claim. To find
13 infringement, you must find that each step was
14 performed by the accused infringer.

15 You will first need to understand
16 what each claim covers in order to decide
17 whether or not there is infringement of the
18 claim and to decide whether or not the claim is
19 invalid based on the prior art.

20 It is the Court's role to define
21 the terms of the claims, and it is your role to
22 apply those definitions to the issues that are
23 asked to decide in this case. Therefore, as I
24 explained to you at the start of the case, the

1 Court has determined the meaning and scope of
2 the claims, and you have been provided the
3 definitions of certain claim terms in your list
4 of claims and Court's construction of claim
5 terminology. You must accept the definitions of
6 those words in the claims as being correct. It
7 is your job to take those definitions and apply
8 them to the issues that you are deciding,
9 including the issues of infringement and
10 validity. Let me remind you of those
11 definitions:

12 In each claim, space-related data,
13 means data related to a geographical location.

14 In each claim, plurality of
15 spatially distributed data sources means a
16 plurality after geographically separate data
17 sources.

18 In each claim, centrally storing
19 the data for the field of view, means storing
20 requested data for the field of view in memory
21 at the location of the request.

22 In each claim, image resolution
23 means the level of detail or spatial precision
24 contained in an image. In addition, image

1 resolutions means the plurality of the level of
2 detail or spatial precision contained in an
3 image.

4 In each claim, representing the
5 data for the field of view in a pictorial
6 representation having one or more sections,
7 means providing and organizing the data
8 necessary for displaying the field of view in a
9 pictorial representation having one or more
10 sections. However, the method of claim does not
11 include a final step of displaying the visual
12 image to the user, using the hardware of a
13 display device or using generic graphics
14 software or firmware associated with that
15 display device.

16 In each claim, dividing each of
17 the one or more sections having image
18 resolutions below a desired image resolution
19 into a plurality of smaller sections, requesting
20 higher resolution space-related data for each of
21 the smaller sections means dividing each of the
22 one or more sections having image resolutions
23 below a desired image resolution into a
24 plurality of smaller sections, prior to

1 requesting higher resolution space-related data
2 for each of the smaller sections. While
3 dividing any given section into smaller sections
4 must occur prior to requesting higher resolution
5 space-related data for each of those smaller
6 sections, it is not necessary that all sections
7 must be divided before higher resolution
8 space-related data can be requested for any of
9 the smaller sections.

10 In each claim, repeating step F,
11 dividing the sections into smaller sections,
12 until every section has the desired image
13 resolution or no higher image resolution data is
14 available means repeating step F, dividing the
15 sections into smaller sections, until every
16 section has the desired image resolution or no
17 higher image resolution data is available.

18 In claim 3, the coordinates of the
19 data means a distinct position in a given space.

20 In claim 14, quadrant tree means a
21 data structure where each node has four equally
22 sized children.

23 In claim 28, polygonal grid model
24 means a model of an object that represents the

1 objects surface using a measure of polygons to
2 form a grid.

3 The beginning, or preamble of each
4 asserted claim uses the word comprising.
5 Comprising means including or containing but not
6 limited to.

7 In claim 1, step F, the substep of
8 sub-dividing must be performed before the
9 substep of requesting, and step F must be
10 performed before step G.

11 Claim terms not specifically
12 defined by me should be interpreted by you based
13 on their plain and ordinary meaning to one of
14 ordinary skill in the relevant technology. The
15 meaning of words in the patent claims is the
16 same for both infringement and invalidity.

17 You must pay careful attention to
18 the language of the claims. It is the claims,
19 and not the rest of the patent, that define the
20 invention that ACI has a right to exclude others
21 from using. Only if you decide that an accused
22 Google Earth product performs each and every one
23 of the steps in a claim is that claim infringed
24 by that product.

1 This case involves two types of
2 patent claims: Independent claims and dependent
3 claims.

4 An independent claim sets forth
5 all of the steps that must be performed in order
6 to be covered by that claim. Thus, it is not
7 necessary to look at any other claim to
8 determine what an independent claim covers. In
9 this case, claim 1 of the '550 patent is an
10 independent claim.

11 The remainder of the claims in the
12 '550 patent are dependent claims. A dependent
13 claim does not itself recite all of the steps of
14 the claim, but refers to another claim for some
15 of its steps. In this way, the claim depends on
16 another claim.

17 A dependent claim incorporates all
18 of the steps of the claim(s) to which it refers.
19 The dependent claim then adds its own additional
20 steps. To determine what a dependent claim
21 covers, it is necessary to look at both the
22 dependent claim and any other claims to which it
23 refers. A product that performs all of the
24 steps of both of the dependent claim and the

1 claim(s) to which it refers is covered by that
2 dependent claim.

3 An accused product is only covered
4 by, and therefore, only infringes a dependent
5 claim if the accused product performs all of the
6 steps of both of the dependent claim and the
7 claim, and to which dependent claim refers.

8 Because a dependent claim incorporates all of
9 the features of the independent claim it refers
10 to, if you find that an independent claim is not
11 infringed, then the claims that depend on that
12 independent claim cannot be infringed.

13 I will now instruct you on the
14 specific rules you must follow to determine
15 whether ACI has proven that Google has infringed
16 one or more of the patent claims involved in
17 this case.

18 To prove infringement, ACI must
19 prove by a preponderance of the evidence that
20 one or more of Google's products performs
21 methods that infringe one or more of the
22 asserted claims. An asserted method claim such
23 as claims 1, 3, 14 and 28 is infringed if Google
24 has used the method in the United States, i.e.,

1 if Google has done something in the United
2 States that performs every step in that asserted
3 claim. Performance of the method outside the
4 United States is not covered by the claims.

5 Evidence of independent
6 development of the patented invention may not be
7 considered in determining patent infringement,
8 though it may be relevant to obviousness.

9 Infringements of a patent is
10 assessed on a claim by claim basis. When a
11 thing (such as use of a method) meets all of the
12 requirements of a claim, the claim is said to
13 cover that thing, and that thing is said to fall
14 within the scope of that claim. In other words,
15 a claim covers a method where each of the claim
16 steps is performed in that method.

17 The infringement of each of the
18 four claims must be considered separately.
19 Thus, you must compare each claim to each
20 accused Google Earth product to determine
21 whether each product's use includes every
22 requirement of the claim. If the use of any
23 accused Google Earth product does not perform
24 one or more of the steps recited in a claim,

1 then that product does not infringe that claim.

2 ACI is not required to prove that
3 Google intended to infringe or knew of the
4 patent to prove infringement. ACI does not
5 contend that Google copied the invention claimed
6 in the patent.

7 Google does not dispute that steps
8 A through E of claim 1 are met. Google also
9 does not dispute that the additional limitations
10 of claims 3, 14 and 28 are met if the
11 limitations of steps F and G of claim 1 are met.

12 ACI and Google dispute whether the
13 accused Google Earth products meets steps F and
14 G of claim 1. In order to find infringement,
15 you must consider whether each of Google's
16 accused products infringes each of the four
17 asserted claims - claims 1, 3, 14 and 28, and
18 conclude that at least one Google Earth product
19 meets every step of at least one claim.

20 Invalidity generally.

21 I will now instruct you on the
22 rules you must follow in deciding whether or not
23 Google has proven that claims 1, 3, 14 and 28 of
24 the '550 patent are invalid.

1 Patents issued by the Patent and
2 Trademark Office (PTO) are presumed to be valid,
3 but not all patents that are issued by the PTO
4 are, in fact, valid. You may find that the
5 patent claims invalid if Google establishes the
6 necessary facts by clear and convincing
7 evidence, i.e., you must be left with a clear
8 conviction that the claim is invalid. Evidence
9 concerning the inventor's duty of candor before
10 the PTO may not be considered for purposes of
11 determining validity.

12 What qualifies as prior art.

13 Before you can determine whether
14 the patent claims are valid in light of the
15 prior art, you must determine what qualifies as
16 prior art.

17 Prior art may include items that
18 were publicly known or that have been used or
19 offered for sale, or references, such as
20 publications or patents, that disclose the
21 claimed invention or elements of the claimed
22 invention. To be prior art, the item or
23 reference must have been made, known, used,
24 published, or patented before December 17, 1995.

1 In the preliminary instructions I
2 told you the priority date was December 22,
3 1995. The parties have now agreed to a December
4 17, 1995 priority date.

5 Google contends that certain
6 references are prior art because they were
7 printed publications before December 17, 1995,
8 and that certain systems are prior art because
9 they were used publicly before that date.

10 Google contends that the following references
11 constitute prior art:

12 The SRI TerraVision system; and
13 paragraph two, the T_Vision paper.

14 ACI and Google dispute whether the
15 SRI TerraVision system qualifies as prior art
16 based on prior public use, which I will explain
17 shortly. ACI and Google also dispute whether
18 the T_Vision paper qualifies as prior art. The
19 T_Vision paper is a printed publication, only if
20 it is was accessible to the public prior to
21 December 17, 1995. To qualify the T_Vision
22 paper as prior art, Google must prove to you by
23 clear and convincing evidence that this
24 reference was disseminated or otherwise made

1 available to the extent that persons interested
2 in ordinary skilled in the subject matter
3 exercising reasonable diligence could locate it
4 prior to the December 17, 1995. It is not
5 necessary for the printed publications to have
6 been available to every member of the public.

7 ACI and Google do not dispute that
8 global mapping patent reference is a printed
9 publication. You should therefore consider it
10 as prior art to the '550 patent.

11 Anticipation.

12 Google contends the T_Vision paper
13 anticipates claims 1, 14, and 28, but not claim
14 3. You may find a claim is anticipated only if
15 all of its steps were present in a single prior
16 art reference in the arrangement claimed to. To
17 anticipate a prior art reference does not have
18 to use the same words as the claim, but all of
19 the requirements of the claim must have been
20 present so that a person having ordinary skill
21 in the art could make and use the claimed
22 invention based on that knowledge.

23 To anticipate the claimed
24 invention, the disclosures of a prior art

1 reference do not need to have been made, used or
2 performed. Google must prove anticipation by
3 clear and convincing evidence.

4 Google contends that the public
5 use of the SRI TerraVision system invalidates
6 claims 1, 3, 14 and 28 of the patent. This is
7 sometimes referred to as anticipation. You may
8 find a claim is invalid based on prior public
9 use if there is clear and convincing evidence of
10 each claim step was publically used. ACI and
11 Google dispute whether SRI's TerraVision system
12 was publically used. SRI's TerraVision system
13 was in public use if it was accessible to the
14 public. Factors relevant to determining whether
15 a use was public include the nature of the
16 activity that occurred in public; public access
17 to the use; confidential obligations imposed
18 upon observers and the circumstances surrounding
19 testing and experimentation. An invention is
20 publically used if it is used by the inventor or
21 by a person who is not under any limitation,
22 restriction, understanding or obligation of
23 secrecy to the inventor.

24 The absence of affirmative steps

1 to conceal the use of the invention is evidence
2 of a public use. However, non-commercial secret
3 use by a third party is not public, unless
4 members of the public or employees of the third
5 party have access to the invention. To
6 establish a public use of a prior art system,
7 Google must prove the system was complete and
8 could be used for its intended purpose. To
9 prove that SRI's TerraVision system was used
10 publically, Google must show by clear and
11 convincing evidence that it was accessible to
12 the public prior to December 17, 1995. If the
13 SRI TerraVision system satisfied those
14 requirements, it qualifies as prior art.

15 Google contends that the patent
16 claims are obvious over various prior art
17 references. Even if you find that the T_Vision
18 paper and the SRI TerraVision system references
19 do not, by themselves, invalidate the claims,
20 you must consider those references in connection
21 with the issue of obviousness if you conclude
22 that those references constitute prior art.

23 Google contends that claims, 1, 3
24 14 and 28 are obvious in view of the public use

1 of the SRI TerraVision system and the knowledge
2 and skill of a person of ordinary skill in the
3 art at the time of the alleged invention.
4 Google's contends that claims 1, 14 and 28 would
5 have been obvious in view of the T_Vision paper
6 and the knowledge and skill of a person of
7 ordinary skill in the art at the time of the
8 alleged invention.

9 Google contends that Claim 3 would
10 have been obvious in view of the combination of
11 the T_Vision paper, the Global Mapping patent
12 and the knowledge and skill of a person of
13 ordinary in the art at the time of the alleged
14 invention.

15 I will now instruct you on the law
16 of obviousness. Even if a claimed invention was
17 not fully anticipated because it was not exactly
18 described or disclosed in a single prior art
19 reference, a patent claim may still be invalid
20 if the asserted claim would have been obvious to
21 a person of ordinary skill in the art at the
22 time of the alleged invention.

23 In determining whether a claimed
24 invention was obvious, you must consider A, the

1 level of ordinary skill in the art that someone
2 would have had at the time of the claimed
3 invention; B, the scope and content of the prior
4 art and C, any differences between the prior art
5 and the claimed invention.

6 The parties agree that a person of
7 ordinary skill in the art at the time of the
8 claimed invention would have had a Bachelor of
9 Science degree (or its equivalent) and three
10 years experience with research or development,
11 engineering product development requirements
12 analysis, in computer graphics and/or digital
13 image processing. With more education, for
14 example, post graduate degrees and/or study,
15 less industry experience is needed to attain
16 that ordinary level of skill.

17 I have already instructed you
18 about how to determine what references qualified
19 as prior art. It will be up to you to evaluate
20 what those prior art references taught or
21 disclosed and the scope of any differences
22 between the prior art and the claimed invention.
23 A claim can be obvious over the prior art based
24 on a combination of references or considering

1 the single reference. To tender obvious the
2 claimed invention, the disclosures of a printed
3 publication do not need to have been made, used
4 or performed. In assessing obviousness or
5 non-obviousness, keep in mind that an invention
6 is not obvious simply because each of its
7 elements appeared in the prior art. Many
8 inventions rely on building blocks of prior art,
9 and you should not judge obviousness in
10 hindsight. You should consider whether there
11 was a reason that would have prompted a person
12 of ordinary skill at the time of the claimed
13 invention and combine the known element in a way
14 that the claimed invention did.

15 Factors you may consider in this
16 regard include whether the claimed invention was
17 merely the predictable result of using prior
18 art elements according to their known functions,
19 whether the claimed invention provided an
20 obvious solution to a known problem, whether the
21 prior art taught or suggested the desirability
22 of combining elements or claimed in the
23 invention, whether it would have been obvious to
24 try to create the invention, for example, if

1 there was a design need or market pressure to
2 solve a problem and there were a finite number
3 of identified predictable solutions, and whether
4 the claimed combination would have occurred in
5 any way due to design incentives or other market
6 forces. You should also take into account any
7 objective evidence (sometimes called secondary
8 assertions) that may shed light on the
9 obviousness or non obviousness of the claimed
10 invention. In particular, if products
11 incorporating the invention were commercially
12 successful as a result of the claimed invention,
13 then that may suggest that the invention was
14 non-obvious. But you should disregard any
15 commercial success that was due to factors other
16 than the claimed invention, such as other
17 product features or sales and marketing
18 evidence. If you find that the claimed
19 invention satisfied a long felt but previously
20 unsolved need or that persons other than the
21 inventors had tried and failed to achieve the
22 invention, that may also suggest that the
23 invention was non-obvious.

24 On the other hand, if you find

1 that someone else came up with the claimed
2 invention before or at about the same time that
3 ACI's inventors thought of it, that may suggest
4 that the claimed invention was obvious.
5 Finally, acceptance of the claim invention by
6 others shown by praise for or licensing of the
7 claimed invention may suggest that the claimed
8 invention was not obvious. In this connection,
9 you should give less weight to a license entered
10 into for the purpose of avoiding the cost of
11 litigation, all things being equal. These
12 factors are relevant only if there is a
13 connection or nexus between the factor and the
14 invention covered by the patent claims.

15 Even if you conclude that some of
16 the above indicators have been established,
17 those factors should be considered along with
18 all the other evidence in the case in
19 determining whether Google has proven that the
20 claimed invention would have been obvious. Keep
21 in mind that all these factors relate to
22 obviousness only. Not to anticipate or to
23 publish use. Google must prove obviousness by
24 clear and convincing evidence. I will now

1 instruct you on damages. If you find that
2 Google has infringed any of claims 1, 3, 14 and
3 28 of the '550 Patent and you find that claim is
4 not invalid, you must determine the amount of
5 money damages to which ACI is entitled. By
6 instructing you on damages, I do not suggest
7 that one or the other party should prevail on
8 infringement or invalidity. These instructions
9 are provided to guide you on the calculation of
10 damages in the event you find infringement of a
11 valid patent claim and thus must address the
12 damages issues. The amount of damages must be
13 adequate to compensate ACI for the infringement.
14 Here ACI seeks to recover the reasonable royalty
15 for use of the invention by Google. At the same
16 time, the object of damages is to compensate,
17 not to punish. You should not award additional
18 damages if you find that the patent or patents
19 were used without permits. You also may not add
20 anything to the amount of damages for interest.

21 You may award damages only for the
22 amount that ACI proves by a preponderance of the
23 evidence constitute a reasonable royalty.

24 Where the parties dispute a matter

1 concerning damages, it is ACI's burden to prove
2 by a preponderance of the evidence that ACI's
3 version is correct. ACI must prove the amount
4 of damages with reasonable certainty, but it
5 need not prove the amount of damages with
6 mathematical precision. On the other hand, ACI
7 is not entitled to damages that are remote or
8 speculative.

9 Any damages you assess in this
10 case should be calculated starting on July 13,
11 2010. A royalty is a payment made to a patent
12 holder in exchange for the right to make, use,
13 sell, offer to sell, or import the claimed
14 invention. A reasonable royalty is the amount
15 of royalty payment that a patent holder and the
16 infringer would have agreed to in a hypothetical
17 negotiation taking place at a time just before
18 when the infringement first began. In this
19 case, the hypothetical negotiation would have
20 occurred in June 2005, when Google Earth was
21 introduced.

22 In considering this hypothetical
23 negotiation, you should focus on what the
24 expectations of the patent holder and the

1 infringer would have had they entered into an
2 agreement at that time, and had they acted
3 reasonably in their negotiations.

4 In determining this, you must
5 assume that both parties believed the patent was
6 valid and infringed and that the patent holder
7 and infringer were willing to enter into an
8 agreement. The reasonable royalty you determine
9 must be a royalty that would have resulted from
10 the hypothetical negotiation, and not simply a
11 royalty either party would have preferred.
12 Evidence of things that happened after the
13 infringement first began can be considered in
14 evaluating the reasonable royalty only to the extent
15 that the evidence aids in assessing what royalty
16 would have resulted from a hypothetical negotiation.
17 Although evidence of the actual profits an alleged
18 infringer made may be used to determine the
19 anticipated profits at the time of the hypothetical
20 negotiation, the royalty may not be based on the
21 actual profits the alleged infringer made. Evidence
22 concerning Google's revenues or financial projections
23 from after 2006 is not material to and cannot be
24 considered for the purpose of determining the royalty

1 rate. ACI's financial proposals after 2006 may be
2 given less weight for the purposes of determining a
3 reasonable royalty.

4 In determining the reasonable royalty, you should
5 consider all the facts known and available to the
6 parties at the time the infringement began. Some of
7 the kinds of factors that you may consider in making
8 your determination are:

9 1. The Stanford license agreement, which I will
10 discuss in more detail later.

11 2. The nature and scope of the license, as exclusive
12 or nonexclusive, or as restricted or nonrestricted in
13 terms of its territory or with respect to whom the
14 manufactured product may be sold.

15 3. The commercial relationship, if any, between ACI
16 and Google.

17 4. The effect of selling the patented product in
18 promoting sales of other products of the licensee.

19 5. The duration of the '550 patent and the term of
20 the license.

21 6. The established profitability of any product made
22 under the '550 patent; its commercial success; and
23 its current popularity.

24 7. The utility and advantages of the patented

1 invention over the old modes or devices, if any, that
2 had been used for achieving similar results.

3 8. The nature of the patented invention; whether
4 there is any commercial embodiment of it as owned and
5 produced by ACI; and the benefits to those who have
6 used the invention.

7 9. The extent to which Google has made use of the
8 invention; and any evidence that shows the value of
9 that use.

10 10. The portion of the profit that arises from the
11 patented invention itself as opposed to profit
12 arising from unpatented features, such as the
13 manufacturing process, business risks, or significant
14 features or improvements added by Google.

15 11. The opinion testimony of qualified experts.

16 No one factor is dispositive, and you can and should
17 consider the evidence that has been presented to you
18 in this case on each of these factors. You may also
19 consider any other factors which in your mind would
20 have increased or decreased the royalty the infringer
21 would have been willing to pay and the patentholder
22 would have been willing to accept, acting as normally
23 prudent business people. You should determine the
24 amount that a licensor (such as ACI) and a licensee

1 (such as Google) would have agreed upon in 2005 if
2 both sides had been reasonably and voluntarily trying
3 to reach an agreement. That is, the amount which a
4 prudent licensee - who desired, as a business
5 proposition, to obtain a license - would have been
6 willing to pay as a royalty. You may also consider
7 whether Google could have made a reasonable profit.
8 This is the framework which you should use in
9 determining a reasonable royalty, that is, the
10 payment that would have resulted from negotiation
11 between the patentholder and the infringer taking
12 place at a time just prior to when the infringement
13 began.

14 The reasonable royalty award must be based on the
15 incremental value that the patented invention adds to
16 the end product. When the infringing products have
17 both patented and unpatented features, measuring this
18 value requires a determination of the value added by
19 the patented features. The ultimate combination of
20 royalty base and royalty rate must reflect the value
21 attributable to the infringing features of the
22 product, and no more.

23 Use of the Stanford agreement.

24 In estimating the reasonable royalty for any

1 infringement, Google has relied on a license
2 agreement with Stanford University. You will need to
3 decide whether that agreement is comparable to the
4 agreement that would have been reached in the
5 hypothetical negotiation I mentioned earlier. Google
6 bears the burden of proving that the situations are
7 comparable. In deciding whether a license agreement
8 is comparable, you may consider, among others, the
9 following factors:

10 1. Whether the negotiating circumstances were
11 similar - for example, whether the agreement
12 reflected an arms-length transaction between willing
13 parties;

14 2. Whether the structure of the license agreement
15 was similar to the structure of the license that
16 would have resulted from the hypothetical
17 negotiation;

18 3. Whether the patents and products covered by the
19 license agreement were similar to the patents and
20 products involved in the hypothetical negotiation;

21 4. Whether other product functionality not covered
22 by the patent-in-suit affects the comparability of
23 the two negotiations;

24 5. Whether the relationship between the licensing

1 parties was similar to the relationship between the
2 patent owner and Google at the time of the
3 hypothetical negotiation;

4 6. The time when the license agreement was entered
5 into relative to the timing of the hypothetical
6 negotiation.

7 A license agreement needs not be perfectly comparable
8 to a hypothetical license that would have been
9 negotiated between ACI and Google in order for you to
10 consider it. However, if you choose to rely upon
11 evidence from any other license agreements, you must
12 account for any differences between those licenses
13 and the hypothetically negotiated license again ACI
14 and Google.

15 Damages tied to a patented method.

16 When the claimed invention is part of the
17 functionality or success of the accused product,
18 damages must be based upon the value of the claimed
19 invention. In this case, Google argues that the
20 value of the accused product is based on many
21 features and the performance of many methods,
22 including other technical features and methods and
23 patented technologies unrelated to the performance of
24 the method claimed in the patent. You may award

1 damages only based on the value of the claimed
2 method.

3 ACI has the burden of establishing any damages award.
4 ACI, therefore, must prove by a preponderance of the
5 evidence that the damages it seeks are attributable
6 to the claimed method, and not to the other
7 technologies, features, methods, or aspects of the
8 accused products. ACI's evidence must be reliable
9 and tangible; it cannot be conjectural or
10 speculative. Any evidence of a reasonable royalty
11 must explicitly tie proof of damages to the claimed
12 method's role in the marketplace.

13 Again, you only reach the damages question if you
14 find that Google's products infringe at least one
15 claim that has not been proven invalid.

16 Damages tied to other Google products.

17 ACI seeks to recover damages reflecting the alleged
18 value that Google Earth contributes to Google's
19 profitability. ACI does not accuse additional Google
20 products of infringing the patent, and damages cannot
21 be awarded on any theory that they do infringe. ACI
22 is not entitled to damages based upon the value of
23 other Google products unless ACI establishes that it
24 is more likely than not that revenues from those

1 products were generated by the use of the patented
2 method in Google Earth. To show that it is entitled
3 to damages based on these other products, ACI must
4 establish a proper apportionment of the revenues
5 Google generated from those products - that is, ACI
6 must show what portion of the revenues generated by
7 those products results from the infringement.

8 In short, to recover damages tied to additional
9 Google products, which are not themselves accused of
10 infringement, ACI must prove, first, that Google
11 Earth infringes at least one valid claim of the
12 patent, and, second, that Google Earth increases the
13 revenues Google collects from those other products.

14 If you conclude that ACI has proved both of these
15 things, then you must first determine what fraction
16 of the revenues from the other products is
17 attributable to the patented technology and then
18 determine what a reasonable royalty on those revenues
19 would be.

20 Any reasonable royalty rate you determine for
21 revenues from the other Google products not accused
22 of infringement should be no more than the reasonable
23 royalty rate for revenues from Google Earth itself.

24 That's quite a mouthful. That took forty-five

1 minutes. And as I said, you will have copies of
2 these instructions to take back with you during the
3 deliberations. And I will also give you some final
4 instructions after the parties' closing arguments,
5 which I think will take about two hours.
6 You will find in each case that the lawyer delivering
7 the closing argument may reserve some of the time
8 from the opening to use in rebuttal.
9 I think before we get to the closing arguments, this
10 might be a good time to take our morning break and
11 then come back and have the closing arguments.
12 All right. Thank you members of the jury. We'll
13 take a fifteen-minute break.

14 (Jury leaving the courtroom at 10:05 a.m.)

15 THE COURT: Anything before we
16 recess?

17 MR. HAWES: No, Your Honor.

18 MR. SNYDER: Nothing further, Your
19 Honor.

20 THE COURT: We'll resume at about
21 10:15, 10:20, we'll do the closing arguments at
22 that point.

23 (A brief recess was taken.)

24 THE COURT: Be seated please. All

1 right. Unless there's anything else, why don't
2 we bring the jury back.

3 MR. PARTRIDGE: Nothing from
4 Plaintiff, Your Honor.

5 THE COURT: Who is going to
6 deliver the closing argument?

7 MR. PARTRIDGE: Mr. Hawes will for
8 ACI.

9 MR. SNYDER: I will for Google,
10 Your Honor.

11 THE COURT: Okay. Thank you.

12 (Jury enters.)

13 THE COURT: Welcome back, members
14 of the jury. We're ready for closing arguments
15 beginning with Mr. Hawes for ACI.

16 MR. HAWES: Thank you, Your Honor.
17 Are you ready, Your Honor?

18 THE COURT: Please.

19 MR. HAWES: Good morning once
20 again. I'm sure it feels like its been a long
21 week. Four days of testimony, source code,
22 financial documents, patents, claims, videos,
23 but it all wraps together now. And as the judge
24 has told you, the dispute of the parties today

1 is in your hands. Google and Google alone
2 decided to offer Google Earth for free. And
3 with that free offering of the flying invention,
4 you can image how licensing of that to companies
5 who might want to offer that and make money
6 would turn out. As you know, millions, millions
7 and millions of people have used Google Earth
8 and did so in just the first year of its
9 release. It was a free product and it was cool.
10 And it did very, very well. Google and Google
11 alone decided not to seek permission from ACI,
12 decided not to seek permission to use the '550
13 Patent. And that's why we're here today.
14 That's why this lawsuit has occurred.

15 Now, you heard yesterday, just
16 yesterday from Mr. Reed that even today it's
17 Google's position that when they use someone
18 else's invention for free, they don't have to
19 pay a royalty. You remember when I questioned
20 Mr. Reed and I said if I use Google Earth and I
21 don't click on an ad and I don't download,
22 whatever it was, Chrome, is there any part that
23 you say Google ought to pay to ACI? He said no.
24 He said Google ought to be able to do that for

1 free, ought to be able to infringe ACI's patent
2 for free. So that's what this is about, your
3 decision of whether that makes sense, in view of
4 the law you've seen that if you infringe a valid
5 patent, you are due, at minimum, a reasonable
6 royalty for the use of that invention.

7 Today you'll determine what credit
8 is due for the '550 reissue patent. So let's
9 talk about what it means to be a reissue patent.
10 Most patent cases are about patents. Why is
11 this a reissue patent? Well, it's because after
12 the first patent was approved by the Patent
13 Office, ACI went back to the Patent Office and
14 pointed out some additional information they had
15 received and the Patent Office came along and
16 again approved the patent. And finally, some
17 more information came in and ACI put their
18 patent at risk again and said look at this, is
19 it, is it still good? Is it a valid patent?
20 And what happened? The Patent Office said yes.
21 This patent has been triple checked and that's
22 going to be very important when you consider
23 some of the issues in this case, whether this
24 triple-checked patent and what the Patent Office

1 has done ought to be second guessed.

2 The other thing that's in this
3 patent is a list of the information that was
4 considered by the examiner during this triple
5 check process. First of all, and I know this is
6 hard to read, and I hope -- I don't know if it
7 is on your monitors or not, but here we have
8 several references all having to do with that
9 TerraVision you've heard so much about. I want
10 you to remember that during the triple check
11 process, that was in front of the Patent Office.
12 What else was in front of the Patent Office?
13 Well, you heard about all these events at
14 SIGGRAPH '95. That was in front of the Patent
15 Office too. You can see all the SIGGRAPH '95
16 CD's, articles, all that given to the patent
17 office. And finally what else was in front of
18 the Patent Office is the deposition testimony of
19 Mr. Lau. So Mr. Lau has actually spoken to the
20 Patent Office, he's had depositions on these
21 issues before and ACI gave that to the Patent
22 Office, so the Patent Office could do its triple
23 check. That's the reissue patent that you're
24 looking at today.

1 Now, of course we've talked about
2 how this all started, how every boy wants to fly
3 through the air and be Superman and look over
4 the earth. You can see a man here doing the
5 same thing, looking over the earth, using the
6 earth tracker. Still sitting there in the
7 corner. I'm sure they want it out of the court
8 room, but we like it. ACI and Art+Com are proud
9 of what they built and proud of giving this kind
10 of experience back to people back in 1994 and
11 1995. And we also talked about how they brought
12 EarthTracker over here to the United States to
13 SGI and California and showed it in the
14 corporate showroom of SGI in order to impress
15 SGI's other customers. And we talked about how
16 future Google employees Michael Jones and Brian
17 McClenden were at SGI. And you got to hear Mr.
18 Jones himself talking about going over and using
19 the EarthTracker while he was there.

20 And then they left SGI and we
21 heard a little bit about how they moved first to
22 make their own company, Intrinsic Graphics.
23 Didn't quite work out and so what did they do?
24 They decided to move and create a company called

1 Keyhole. And I'm not going to take the time I
2 did in opening when I told you this story the
3 first time, but it's the story of this case,
4 it's still important. Because at Keyhole they
5 developed EarthViewer and they developed a
6 product and they start selling that product.
7 They charged \$69 a year to their customers.
8 There was real money involved in this product.
9 It was a product that they cared about, that
10 they charged money for and that customers
11 bought.

12 But then what happens? They hire
13 John Hanke. Great addition. We got to hear
14 from him on video. They take this product that
15 they are charging \$69 for and when Google buys
16 them, what happens? Google rebrands the product
17 as Google Earth and it reprices the product at
18 zero dollars. Think about that. Is the
19 invention any less used because Google chose to
20 price the product as zero dollars as it was used
21 when Keyhole was pricing the product at \$69?
22 Should the payment, the royalty to the patent
23 owner be any less because Google makes that
24 decision? That's in your hands today, whether

1 that's the case.

2 Now, we talked early on about
3 Google's strategy and remember when Google made
4 that zero dollar decision, Google had a strategy
5 behind it. We talked about this on Monday and
6 Mr. Nawrocki talked about that strategy when he
7 was on the stand and we'll talk again, why does
8 Google do the zero dollars? How does that work
9 for Google to make money? And we'll go through
10 that in detail this afternoon. Now, the first
11 communication is about the patent. Again, you
12 got to hear from Mr. Jones and what Mr. Jones
13 did right away was he told ACI it's a nice to
14 have patent. It's not one we need, it's not
15 even something, as he puts it, I think it was a
16 different type of icing on the cake. It was not
17 even something we want to use, it's just nice to
18 have, maybe if there's a lawsuit we'll use it
19 for defense. That's what he told ACI.

20 And you've heard from Google about
21 those communications in 2006. There were a lot
22 of them. Those e-mails are hard to read, they
23 are old. I know it's tough to read those, and
24 frankly they are all not that important, because

1 they all were based on Google telling ACI it's a
2 nice to have patent. ACI didn't know whether
3 Google was truly saying it's a nice to have
4 patent, but you heard Pavel Mayer. He believed
5 Mr. Jones. He believed this wasn't a patent
6 they were using, that they had a different way
7 and that this was just something that well, we
8 might take it, we might not. It's nice to have.0

9 All of these negotiations in 2006
10 were based on that premise, on that
11 communication through Mr. Jones and Mr. Mayer
12 that it was a nice-to-have patent. Keep that in
13 mind because I'm sure you're going to get to see
14 all these E-mails in detail again today. Keep
15 that in mind.

16 Now, at the end of that process,
17 as you remember, Google's lawyers said your
18 patent has problems and here is some documents
19 showing you the problems your patents have. ACI
20 not knowing if Google was right or wrong knew
21 who to ask and went to the patent office. They
22 said here are those documents. Is it really a
23 problem? Is our patent still good? They risked
24 their patent, because you go to the patent

1 office and you ask if your patent is still good,
2 they may say no. But Mr. Mayer was willing to
3 put his patent at risk, to take those documents
4 to the patent office and ask do I still have a
5 good patent. And as we all know, the patent
6 office said yes.

7 What was happening while the
8 patent office was analyzing those patents?
9 Frankly, Google Earth was going gangbusters. We
10 have seen big charts, lots of numbers. The
11 bottom line really are the sessions. Mr. Birch
12 testified for you and he told you what a session
13 was of Google Earth. He said a session is when
14 somebody opens and begins using Google Earth.
15 So that's what a session is.

16 When you see those big
17 spreadsheets with all those numbers, every one
18 of those numbers, and I know it's millions and
19 millions up to billions, but each time, that's
20 someone opening and beginning to use Google
21 Earth.

22 And you'll remember Dr. Castleman,
23 what does it mean when they're using Google
24 Earth? It means they're using the '550 patent.

1 And here is that spreadsheet. We
2 don't have to go through it line by line. I'll
3 actually let you know, you'll have it back --
4 you'll have a computer back in your deliberation
5 room, and if you want to, this is PTX 55, you
6 can look at every day that Google kept these
7 session numbers for Google Earth. It actually
8 breaks it down by all the different types of
9 Google Earth. There is Google Earth for your
10 computer, there is Google Earth for your iPad,
11 there is Google Earth for your Android phone.
12 Of course, those come a little bit later. Here
13 in 2005 it was just Google Earth for the
14 desktop. All those numbers are there. They're
15 all on that Plaintiff's Trial Exhibit 55. If
16 you want you can certainly take a look.

17 But Mr. Nawrocki, he looked at it
18 for you, took all those numbers. First thing he
19 did was which one of these are in the United
20 States, because ladies and gentlemen, this is a
21 United States patent. We're not asking you, ACI
22 is not asking you to give credit to ACI for
23 Google Earth's success outside the United
24 States. This is about Google Earth in the

1 United States, the use of it in the United
2 States, because it's a United States patent.
3 That's what it comes.

4 He looked at it year to year and
5 determined that since July 2010, and you have
6 just heard the Judge tell you that's when you
7 start the damages calculation is July 2010, that
8 there had been over seven billion uses of Google
9 Earth in the United States.

10 So that's the extent of
11 infringement that we believe has occurred of the
12 '550 patent.

13 So the first question you're going
14 to find on that jury form is a question that ask
15 whether Google Earth infringes. And you know
16 what the real question is? The real question
17 is, did Google infringe over seven billion
18 times? Because that's what you heard about is
19 whether the use of Google Earth by Google to
20 provide this great interface, this flying,
21 zooming entertaining interface that keeps its
22 customers involved for ten, twenty, thirty
23 minutes, whether that infringes. And you got to
24 hear a lot of information about whether that

1 infringed.

2 The first thing we should talk
3 about is what's the most important information
4 you heard. And Google's witnesses will confirm,
5 the most important information you heard about
6 whether it infringes was about source code.
7 Mr. Birch referred to it as the authoritative
8 source. And Dr. Goodchild agreed, it's the
9 ultimate authority.

10 So when it comes to weighing the
11 evidence, even Google agrees it's the source
12 code that really weighs. Let's talk about that.
13 Who showed you that source code? Who walked
14 through the source code with you element by
15 element for these claims?

16 Now, you remember on Monday, I
17 wasn't the only one who stood up. Google's
18 attorney stood up as well. And what he told you
19 is this case is about, it's about a patent case
20 and there are four very specific patent claims.
21 And he's right. This case is about those patent
22 claims.

23 But it was Dr. Castleman who went
24 through those patent claims with you element by

1 element and kept pointing out for you the files,
2 the modules and the comments of Google's
3 engineers that showed how each step of each of
4 those claims was being used by Google Earth.
5 That was the source code analysis you heard.

6 Dr. Castleman is the only one who
7 went through every step of every claim with you.
8 I know it took a while, I know that it was not a
9 quick and easy process, but frankly
10 Dr. Castleman didn't want quick and easy, he
11 wanted right. He wanted correct. And that's
12 why he went through that source code with you
13 step by step, comment by comment, module by
14 module.

15 And he went through claim 1, and
16 even because there was different source code,
17 and remember, it's the source code that counts,
18 he went through different products of Google in
19 order to do a full analysis for you of every
20 element, every step of the '550 claim.

21 That's what Dr. Castleman did.
22 Now, Google, they don't disagree. The Judge
23 just told you, Google doesn't disagree that they
24 do the first two-thirds of that patent claim.

1 No dispute. Dr. Castleman got up there, go
2 through all that source code, no dispute, we all
3 found that out.

4 We did find out that they do
5 dispute steps F and G. And frankly when you
6 look at step G, that means they were disputing
7 step F, because step G says do step F again.
8 And we can all see looking at Google Earth it
9 does it again and again and again. You get
10 frames as you move through. It's those smooth
11 frames that allow you to see the earth moving as
12 though you were flying.

13 Let's focus on that step F and
14 figure out what the real evidence was.

15 Now, Mr. Birch testified about
16 what Google Earth did, but one thing Mr. Birch
17 told you was that he was not the author in any
18 of the Google Earth source code. He told you
19 there were some brilliant engineers at Google,
20 brilliant engineers and they're the best in the
21 industry, and they are the ones who really write
22 the code. So that's interesting. Mr. Birch,
23 who is not evidently one of these engineers, he
24 may well be brilliant, but he's not one of the

1 ones who wrote the source code. He came here to
2 talk to you. But the brilliant engineers, we
3 don't know where the brilliant engineers were.
4 We know they weren't here in Wilmington,
5 Delaware. I hope they're enjoying themselves.
6 You saw video, if you remember, we saw video of
7 two of their engineers, we saw video of Julian
8 Merce who was one of them, and John Rosh, two
9 software engineers, the Google project lead
10 engineers, we took their deposition, but they
11 didn't come here from California.

12 No one from Google who wrote the
13 source code came here to get in that witness box
14 and tell you about how the source code works,
15 didn't come.

16 Dr. Goodchild, their expert
17 witness, he came. He came and he got in that
18 witness box and he told you why he thought
19 Google Earth did not infringe. One of the
20 things he told you was that in describing step
21 F, he described it, these are his words, he says
22 yes, that phrase has been used many times in the
23 trial. The phrase in question, coarse to fine.
24 That's what he used and agreed described step F

1 of the '550 patent, the step that's being
2 contested here, the step that you need to decide
3 about.

4 Then he said, and that's why
5 Google doesn't infringe because it doesn't do
6 coarse to fine. That's what he said. That was
7 the reason. The reason that he gave.

8 But then he was presented with
9 some source code, some source code he didn't
10 tell you about when he was talking with his
11 attorney on the stand. The source code he was
12 presented with when ACI's attorney started
13 talking to him. He goes down to a particular
14 line in the source code and the source code says
15 the default is zero, which means coarse to fine.
16 And he agrees. And then he agrees that coarse
17 to fine is the shorthand for referring to the
18 process in step F of the claim. So the source
19 code had the very thing that he agrees describes
20 step F of the '550 patent claim. He agreed to
21 it.

22 So then what happens? He's agreed
23 that the source code does this. Then what
24 happens? Well, all of a sudden, he's not in a

1 position to analyze the source code anymore,
2 having agreed the source code says default, do
3 it the way the patent does it, he decides he has
4 no basis to answer the question, he would have
5 to consider great detail, it's a very complex
6 source code. He sat in that witness stand and
7 told you he understood this product enough to
8 tell you that Google Earth didn't infringe.

9 But when he realized that there
10 was source code that said it did, all of a
11 sudden it was too complex. He couldn't figure
12 it out. He was not in a position to do that
13 today. Well, maybe he's in a position to do it
14 next week, but it's not going to help any of us,
15 because it's not evidence in this case. He
16 needed to be in a position to do that today if
17 he wanted you to assess his evidence in favor of
18 Google.

19 And then there is his argument
20 about step G. Now, all step G says is do step F
21 until you reach one of two different resolution
22 points and just do F over and over. And we have
23 already seen, Google does step F. If you look
24 at some of the things he said, he said well, it

1 doesn't repeat. Maybe that's because he doesn't
2 think Google does step F.

3 Then he says claim 1 requires
4 these four substeps and that is simply not true.
5 He never tells you why it's not true. He never
6 tells you what it is Google is doing. All he's
7 really saying is Google doesn't do step F,
8 therefore, it doesn't repeat, but we all seen
9 that he did admit that Google does step F, but
10 the source code showed it. Now, all we will get
11 is it just doesn't, it just doesn't, it's simply
12 not true.

13 That's not an argument against
14 infringement. That's not evidence that weighs.
15 The evidence was what Dr. Castleman showed you,
16 the modules, the file names, the specific
17 reasons why it doesn't do -- why it does each
18 step.

19 And, for example, in step G,
20 remember there are two parts, it's still you get
21 the right resolution or you run out of data, and
22 you can see both of those things in here. You
23 can see the target image quality module is in
24 there. You can see the max level module is in

1 there. Target quality, that's resolution,
2 maximum level, that's when you run out of
3 levels, it's the exact stuff and it was
4 explained to you by Dr. Castleman with no
5 response from Dr. Goodchild.

6 What Doctor Goodchild and Mr.
7 Birch did use were made for trial animations.
8 So Doctor Castleman comes to you, works through
9 the source code, file by file, module by module.
10 Mr. Birch and Doctor Goodchild come to you with
11 an animation that was made for this trial, not
12 for Google customers, not for Google's internal
13 engineers. This isn't a Google document that
14 was around before this case. This is a Google
15 document created by the lawyers to show you.

16 Now, Mr. Birch worked with the
17 lawyers, Doctor Goodchild worked with the
18 lawyers, but these were not Google's original
19 documents, they were something that was created
20 for you. Doctor Goodchild said the same thing,
21 the entire slide set was jointly prepared
22 between him and the attorneys.

23 He also said, and it's
24 interesting, he said that the animation that I

1 prepared was the basis for Peter Birch's
2 testimony. So if you think of Doctor Goodchild
3 and Peter Birch as kind of separate independent
4 evidence on the part of Google, that's not what
5 Doctor Goodchild said. He said that he created
6 this animation and that was the basis for Mr.
7 Birch's testimony. So think about that.
8 There's a link. Doctor Goodchild and Mr. Birch,
9 same animation, same document, never used with
10 Google's customers, never used by Google's
11 engineers. That's the evidence that was shown
12 to you. And then it wasn't actually clear what
13 Doctor Goodchild had done because on one side he
14 said the animation I prepared was the basis for
15 Peter Birch's testimony, but then he said I have
16 no particular knowledge about the relationship
17 between the slides that Peter Birch showed and
18 the slides that I showed. How could you
19 reconcile those two things, especially when you
20 look at the slides? And we've got examples
21 right down there. I don't think those slides
22 were independently developed, they sure look
23 about the same to me.

24 So in the end on infringement you

1 need to make a judgment about whether we, ACI,
2 have shown you by a preponderance of the
3 evidence that these claims are infringed by
4 Google Earth. On one side you have the evidence
5 Doctor Castleman presented you with, the source
6 code of three different types of Google Earth,
7 capturing all of the accused products. On the
8 other side you have a made for trial diagram
9 that was created just to show you in this trial
10 with no brilliant engineers coming here from
11 California who wrote the source code to tell you
12 about what the source code really does about
13 what the product really does. It's your job,
14 not my job, to weigh those. And you can weigh
15 the source code more heavily, but you consider
16 all the facts and make your own judgment. I
17 would remind you that both Mr. Birch and Doctor
18 Goodchild agreed the source code is the ultimate
19 authority on what the software does, not a made
20 for trial animation.

21 So when you look at the first
22 question on your verdict form, the very first
23 thing you need to decide is whether Google Earth
24 infringes Claim 1. And if you decide that based

1 on Doctor Goodchild saying that the source code
2 shown to him showed the course define, which is
3 how he defined the operation of Step F, you'll
4 see that indeed all of the elements are used by
5 Google Earth and Google Earth infringes Claim 1
6 of the '550 Patent.

7 Now, the nice thing is that once
8 you get to that point, actually gets pretty easy
9 in question 1, the verdict form. And that's
10 because Google has not in any way contested that
11 if it's infringing Claim 1, it infringes Claim
12 3, it infringes Claim 14, and it infringes claim
13 28. They haven't contested it. They haven't
14 contested that the additional requirements of
15 those claims are met by Google Earth. Doctor
16 Castleman walked through all of those with you
17 and the source code, but you don't even need to
18 worry about it, because it's not even contested.
19 So with regard to that first question, you can
20 go ahead and check off Claim 1, Claim 3, Claim
21 14 and Claim 28.

22 So after the first question on
23 infringement in your verdict form, you'll see
24 several questions, numbers 2 through 8 are all

1 about all this prior art stuff, the TerraVision,
2 the T_Vision patent that he showed for just a
3 little bit. Remember he talked about
4 obviousness. All of that information, the same
5 things the Patent Office has already triple
6 checked and they are asking you to question that
7 to decide that the Patent Office got it wrong.

8 Now, what are they basing -- what
9 evidence are they basing that request on? How
10 are they trying to tell you they have clear and
11 convincing evidence of invalidity? Well, they
12 certainly have Doctor Goodchild. He claimed the
13 patents were invalid, but what I want you to
14 keep in mind is Doctor Goodchild likes to
15 simplify things and he told us that, he told us
16 he's interested in simplifying the case and when
17 we asked him about, you know, going into the
18 files, he said it's my belief that taking them
19 in detail through source code and talking about
20 the meanings of variability would not have been
21 particularly helpful. And the people he's
22 talking about are you. That's the jury that
23 he's saying he's not going to provide detail to
24 because that wouldn't be particularly helpful.

1 And maybe it wouldn't have been helpful to
2 Doctor Goodchild, but it would have been helpful
3 to you. You deserved to get the detail, not the
4 simplification, because you're making a
5 difficulty decision. You're making a decision
6 about a technology that the Patent Office has
7 looked at, very technical references, very
8 technical demonstrations, you deserve the
9 detail.

10 What other simplifications did we
11 encounter with Doctor Goodchild? We already
12 heard one of them, which was in the infringement
13 analysis when, you know, the animation, the
14 simple explanation was my animation shows
15 there's no course define, so no infringement.
16 What's the simple explanation? What was the
17 detailed explanation? And you saw it. He said
18 it the detailed explanation was the source code
19 shows there is course define. The source code
20 shows that the Step F, substeps are all down
21 here, he was the one that said Step F is course
22 define. He was the one that said the source
23 code showed it.

24 What other simplifications did we

1 see? You'll remember his simple approach was
2 just to highlight the text he liked and you
3 remember it was pointed out to him that that
4 text follows the words rather than. In fact,
5 the opposite was true. If you simplify too much
6 you run into some problems and Doctor Goodchild
7 certainly did in the way he considered the
8 evidence in this case.

9 Well, who else do you have to look
10 to? Well, you have Mr. Lau. Now Mr. Lau said,
11 you know, I myself could not attend this
12 symposium. That's what he said at one point in
13 the transcript. But in another point in the
14 transcript I said were you there? He says yes,
15 I was. So at one point I'm not there, at a
16 different point, I am there. Now, he comes back
17 and he says well, there were some receipts and
18 those show that I'm there. Now, if you had made
19 a mistake testifying under oath and you knew you
20 were going to have to explain it, and your
21 explanation was going to involve some paperwork,
22 would you bring the paperwork with you? Would
23 you show the jury I made an honest mistake, here
24 are the receipts? We didn't see any receipts,

1 we didn't see any paperwork. There was no
2 explanation other than just believe me now,
3 don't believe me then. That was about what you
4 got.

5 Now, here we get to the real
6 contribution of this. We've got the over
7 simplification, we've got the believe me now,
8 believe me then, but what's really important
9 when you look at the prior art is they never
10 showed you a single line of source code. They
11 want you to believe what TerraVision was doing
12 at SIGGRAPH '95 based on a whole bunch of
13 documents and grainy video and some of those
14 documents don't even work with each other, but
15 you know, they have the source code.

16 Doctor Goodchild admitted he
17 reviewed the source code. Doctor Lau said he
18 wrote most of the source code. So if they had
19 the source code to TerraVision and they could
20 have shown you exactly how it works, exactly how
21 it was being displayed at SIGGRAPH '95, why
22 didn't they? Why did they come here with a
23 whole bunch of different papers over a couple of
24 years and say it's all kind of in there and

1 here's a grainy video? Why did they take that
2 approach when the Judge has instructed you that
3 invalidity requires clear and convincing
4 evidence? They had the source code and they
5 didn't bring it to you. They didn't show it to
6 you. If they wanted clear and convincing
7 evidence by their own admissions, they should
8 have gone to the authority. They should have
9 gone to the ultimate authority according to
10 Doctor Goodchild, the source code. They had it
11 and they didn't bring it with them. You can
12 take that into consideration when you decide
13 whether the Patent Office should be second
14 guessed.

15 So that's my ultimate question on
16 all of this prior art. Where is the source
17 code? They have it. Why haven't we seen it?

18 So if you find infringement in
19 Question 1 and you don't find that this prior
20 art was source code we don't even know from
21 Questions 2 to 8 causes the Patent Office to be
22 second guessed after the triple check, then you
23 move into what is probably the toughest part of
24 this case. And that's the damages part of this

1 case.

2 Now, the statute we've all seen is
3 not too tough. It says that upon finding for
4 the Claimant, the Court shall award the Claimant
5 damages adequate to compensate for infringement,
6 but in no event less than a reasonable royalty
7 for the use made of the invention by the
8 infringer. Now, it doesn't say the non free
9 use. It doesn't say the use that has direct
10 revenue. It says the use. When Google Earth
11 Free is used by Google, they are using the
12 invention and ACI is entitled to a royalty. I
13 know Mr. Reed doesn't agree, but that's what the
14 statute says.

15 Now, on the damages side of the
16 case, you heard the Judge discuss there are a
17 large number of factors. And every one of those
18 factors if you read through it, I'm not sure
19 it's every one, but perhaps it's 90 percent of
20 them say may, you may consider. You may
21 consider X, you may consider Y. There's like 25
22 factors you may consider. And that makes it
23 difficult. Right? You're not -- infringement
24 you look at each step, you decide if it's there.

1 Damages it's like well, we can look at this, we
2 can look at this, we can look at that. I'm
3 going to tell you the ones I think are
4 important, but you need to assess the record and
5 that's why damages are difficult. You need to
6 look at all those potential factors and decide
7 what you think is right, what you think is a
8 reasonable royalty for the use made of the
9 invention. And I'm going to start with that
10 Google strategy document and I'm going to turn
11 the page in a moment once we get inside it,
12 because this is one of those confidential
13 documents we talked about on Monday.

14 I kind of think of this document
15 almost as financial source code, because like
16 source code, it's confidential and I always have
17 to play with the paper when I put it up. Like
18 source code it tells us what Google really does.
19 There is their internal strategy, so we're
20 finding out what they really do and also like
21 source code you hardly ever hear the Google
22 witnesses talk about it. Mr. Reed never talked
23 about this strategy document. No other Google
24 witness ever discussed Google's strategy at the

1 time that Google Earth was being released. Why
2 doesn't Google want to talk about their own
3 strategy? Doesn't make much sense.

4 I'll flip the page so we can get
5 into the document. So we talked about the
6 strategy last time and the strategy is complex.
7 It's kind of hard to read, but the bottom line
8 is the strategy is about monetization. And you
9 remember that term we've seen it in lots of
10 Google documents, that's making money, and even
11 now a few months after Google Earth's release,
12 Google Earth is the number one Geo application
13 there supporting monetization for Google. So
14 there's no question that there was not Geo for
15 good, this was good for monetization. That was
16 their strategy.

17 So what's their strategic
18 framework? We talked about this a bit and Mr.
19 Nawrocki went into it in more detail than I can.
20 I'm not an expert on this. What he told you was
21 that what their strategic framework showed was
22 their top priority back in 2006 was just getting
23 more users. It wasn't necessarily about
24 immediately getting revenue from those users

1 right away, it was about getting the users into
2 their framework so they can learn information
3 about those users. By using Google Earth they
4 got to see where you might want to go on
5 vacation, where you lived, what you were
6 interested in. All of that information comes
7 back into Google and you can see it in their
8 UIAP model. And they use that information, you
9 can see they use that information for
10 advertisers, for publishes, they use that
11 information to be more profitable. And what do
12 they call that? They call that the network
13 effect. Having the most users, advertisers and
14 publishers provides data that we use to increase
15 targeting relevance. That targeting relevance,
16 that's all about that big category of
17 advertising right there in the middle of
18 monetization. What they are targeting are
19 advertising. What's relevant is the
20 advertisements you and I see when we do anything
21 on Google, because Google has information about
22 us from all these free applications. And that
23 increases the amount of money they make from
24 advertisers. And it's explained right here in

1 2006 in their strategy document. So Google's
2 concern at the time was to bring users in, not
3 necessarily immediately make money off them, but
4 bring them in. And guess what, Google Earth did
5 that really well. It was really effective in
6 bringing those users in. And Google itself
7 understood in 2006 that that would create a
8 network effect that would allow them to make
9 more money off advertising. And it's in their
10 internal strategy documents, the document that
11 was never discussed by a single Google witness.

12 Let's turn to the Geo business.
13 So the Geo business, as we know, has Maps, it
14 has Earth, it has I think Local Search was the
15 third one. How did the Geo business see their
16 development? And Mr. Lodge, could you move
17 three slides ahead, please. The Geo business
18 saw their development as focused on, as they put
19 it, the overarching investment focus on growing
20 users and usage.

21 That's important language. It's
22 their overarching investment focus. So remember
23 what both Mr. Nawrocki and Mr. Reed told you.
24 The process when you're trying to figure out

1 damages, the process is if Google had been
2 willing, if they had been willing to license the
3 patent, that's something they had been willing
4 to do, and they had come to the table saying we
5 want permission to use your patent, we're
6 willing to pay you a royalty for that. What
7 would have been important to Google in making
8 that investment? Because getting intellectual
9 property that you can use for your product,
10 that's an investment. Getting a patented method
11 that makes your product do the critical things
12 it's supposed to do, it's an investment.

13 And how did Google say they
14 invested? They said their overarching
15 investment focus was in growing users and usage.
16 Mr. Reed didn't talk about users or usage. You
17 have heard about the users and usage. You have
18 heard about the billions of downloads and seven
19 billion uses of Google Earth. Each of those
20 uses is an infringement of the '550 patent.

21 So when you go back to talk and
22 you think about the instructions on damages, I
23 want you to take into account Google's internal
24 strategy of growing the users and investing in

1 users and usage, because that's what Google's
2 documents tell us Google wanted to do.

3 The other thing you need to take
4 into account is the view of the '550 patent. If
5 you remember, the '550 patent, Google said it's
6 nice to have, no big deal. That's not how you
7 treat the hypothetical negotiation. Mr. Reed
8 agreed, when you're in the hypothetical
9 negotiation, that patent is valid and it's
10 infringed.

11 And you know how Mr. Jones
12 characterized the patent that's valid and
13 infringed, he characterized as terrifying. He
14 said if it describes something we already did
15 which would be like terrifying. For a business,
16 you can kind of understand that. They made this
17 investment in Keyhole. They want to reach
18 hundreds of millions of people with Google Earth
19 and what makes Google Earth special the ability
20 to fly and zoom and have the graphics come at
21 you in a smooth way that makes it feel natural,
22 that makes it feel fun, and that's what they
23 were going to have to negotiate over, because
24 that's what the patent allowed them to do, the

1 '550 patent.

2 So they're coming to that
3 negotiation table and they're kind of nervous.
4 It's an essential patent for their product.
5 What are they going to think about? Are they
6 going to think about the kind of licenses that
7 they do with technical incomparable patents like
8 the one you heard about from Stanford? You
9 remember that Stanford license you heard about,
10 Dr. Castleman told you it wasn't technically
11 comparable. The '550 patent was essential, and
12 the Stanford patent applications which was in
13 that agreement, they weren't essential. They
14 were kind of nice to have little things. We
15 know what Google does with nice to have, Google
16 told us, they make a lump sum payment. They say
17 if we ever use it, great.

18 But that's not what this case
19 business. This case isn't about a nice to have
20 patent, it isn't about the kind of things you
21 saw in that Stanford agreement. It's about a
22 patent that was terrifying in the words of
23 Mr. Jones, a patent that they were infringing
24 and valid. That's how you have to consider it

1 when you look at damages. Terrifying.

2 Now, we also heard from Mr. Reed
3 that he talked to Dr. Goodchild about the
4 Stanford agreement. Do you remember that?
5 Dr. Goodchild never said a thing about it. He
6 never said it was technically comparable. He
7 didn't get on that witness stand and tell you
8 anything about that. Instead he got off the
9 witness stand and then Mr. Reed just kind of
10 said, well, I had this conversation. I asked
11 Mr. Reed, well, what about that. He said it's
12 not my expertise. Remember, he said I'm not a
13 technical expert. I don't know if it's
14 technically comparable. He couldn't answer
15 questions about it.

16 So you got Dr. Castleman who was
17 willing to get up there and say, I'm an expert,
18 these Stanford agreement, nothing like Art+Com's
19 patent. Then you got Dr. Goodchild who wasn't
20 willing to even get on the stand and say that.

21 In the damages instructions you
22 will be told you may consider the Stanford
23 agreement. Based on the evidence, the technical
24 comparability, you also may not.

1 Now, we were in the situation
2 where the terrifying patent, and we have got to
3 figure out with seven billion uses, what kind of
4 license deal would they have come to. Well, we
5 do have one point of reference. There were
6 typical license rates that were discussed in
7 2010. And that 2010 is a ways after 2006, and
8 the Judge has instructed you that you can take
9 that into account. You can give less weight to
10 something that's farther in the future, but
11 again, you may.

12 You may also think that this user
13 rate is the only one that really reflects the
14 use of Google Earth because Google Earth is
15 offered for free, so a rate based on revenue or
16 profit, is that a rate which under the statute
17 reflects the use of the invention, or is the ten
18 cents per usage rate the one that reflects the
19 use of the invention. You get to decide that.
20 The Judge has instructed you, you may consider
21 it, you may not. It's your call.

22 So another data point for you to
23 consider in what is the challenging
24 consideration of damages.

1 What else can you consider with
2 regard to damages? Well, Mr. Mr. Nawrocki told
3 you that he determined a 30 percent assignment
4 of value to the patent. Now, you remember that
5 was based on Dr. Castleman, he talked about the
6 different things that go into Google Earth. He
7 talked about how well Google has some amazing
8 infrastructure. And they do, they got huge
9 server farms, not just Google Earth, of course,
10 G-mail, Google Earth, Google.com, big server
11 farms, lots of software and they also put a lot
12 of software into the world, StreetView, a lot of
13 other things. That's an essential part of
14 Google Earth. Dr. Castleman agreed, it's
15 essential.

16 They also have to get all the data
17 for Google Earth. I mean, maybe Google owns
18 satellite. I don't know, but somehow you got to
19 get the data from the satellite that are taking
20 pictures of the earth at all these different
21 resolutions from Wilmington as a whole to a
22 picture that can pick out you or I as we walk
23 out of this building. All geographic data all
24 coming from these satellites. And we give

1 credit to them, they did, Google Earth is
2 amazing with the amount of data it has, the
3 amount of things you can see in it. That's to
4 Google's credit and Google Earth wouldn't be
5 what it is without that. That's essential to
6 Google Earth.

7 But you know what the third thing
8 that's essential to Google Earth is the '550
9 patent. It's the method that allows Google
10 Earth to zoom and cleanly bring you with the
11 view you want to go from place to place.

12 You can have all the servers in
13 the world, you can have a bunch of geographic
14 data, but if it's chunky and moving like this,
15 that's not what Google Earth is about. That's
16 not what makes Google Earth the successful
17 product with seven billion uses that Google has
18 received from the use of that.

19 So with all these data points and
20 all the instructions the Judge has given you,
21 you'll need to think about what's the right
22 reasonable royalty. What's reasonable for the
23 use that Google has made of Google Earth, the
24 seven billion uses Google has made of Google

1 Earth. You get to decide that. You're the
2 jury. It's not Mr. Reed. It's not
3 Mr. Nawrocki. It's not me. It's you, that's
4 your role.

5 I ask you to look carefully at the
6 instructions, think about the evidence. You're
7 going to have with you binders and if you have
8 taken any notes on the trial exhibits, you'll be
9 able to pull the binder out, they'll be numbered
10 and all in order. If you want to look at one of
11 these specialty strategy documents, you can do
12 that. It's all going to be there for you. And
13 I encourage you to look at the evidence
14 carefully and decide what the right rate is
15 given the use made by Google of Google Earth.

16 We know what the use is, it was
17 uncontradicted. Mr. Nawrocki testified over
18 seven billion sessions. And Mr. Reed never
19 challenged that. No Google witness ever
20 challenged that. So that's the only number
21 you'll hear in the evidence of how many sessions
22 there were of Google Earth that were infringing
23 the '550 patent. Over seven billion.

24 But you will a need to take all

1 the facts into account in trying to decide what
2 that means in terms of giving full credit to ACI
3 for the contribution to this success which was
4 the '550 patent.

5 Google should not be able to say I
6 get to use your intellectual property because I
7 give it away for free. That's not their model,
8 there is no free lunch. We have seen their
9 strategy framework. That should not be the
10 outcome here. I ask you to determine a
11 reasonable royalty and apply it to the use of
12 Google's invention and award ACI the appropriate
13 damages.

14 Thank you in advance for all the
15 hard work you're going to do on deliberations.
16 And thank you right now for all the work and
17 attention you have given this jury trial this
18 week. We appreciate it at ACI and we look
19 forward to your verdict.

20 THE COURT: Thank you, Mr. Hawes.

21 Mr. Snyder.

22 MR. SNYDER: Thank you, Your
23 Honor.

24 May I proceed, Your Honor?

1 THE COURT: Yes, please.

2 MR. SNYDER: Google has been
3 telling ACI for ten years that it does not
4 infringe this patent. For ten years we have
5 been trying to make them understand that what
6 Google Earth does is different than what this
7 patent describes.

8 We wanted to come here and we
9 wanted to explain to you what Google Earth does
10 and how it is different. We didn't think it was
11 going to be helpful to wheel in stacks of
12 printouts of source code and tell you to look at
13 little bits and pieces of something that most of
14 you couldn't understand because it's written in
15 a language that you don't read. And there are
16 so much of it. It would take hundreds of hours
17 as you heard from Dr. Castleman.

18 Instead, we brought the senior
19 product manager who has been working with this
20 product for ten years to explain how it works.
21 We brought an expert witness who came in and
22 explained how it works. And once we had done
23 that, what did you hear in response? What did
24 ACI come and ask you to believe? What evidence

1 did they put on to say nope, that's not a
2 description of how it works, it's different?
3 What was that evidence? There wasn't any.

4 You have all been very patient and
5 attentive and we really appreciate the time that
6 you have given us to give us our day in court so
7 that we can explain to you and you can decide
8 that what Google Earth does in accomplishing
9 this very specific process of going from coarse
10 to fine is different from the way it's claimed
11 in the ACI patent.

12 My job today is to try to review
13 that evidence with you and show you piece by
14 piece how you should reach that verdict that
15 Google does not infringe once you've considered
16 all evidence. We're putting it in your hands
17 and trying to give you the tools to do that with
18 the explanations that we have provided.

19 Just as I did in the opening, I'm
20 going to be here for a little while, so I want
21 to give you a quick roadmap into what I'm going
22 to say.

23 First, I want to talk about how
24 Google Earth uses a different approach, and I'm

1 going to spend most of my time talking on that,
2 because it's very important.

3 Second, I'm going to talk about
4 how ACI is still trying to claim for itself
5 public methods, things that were known. This
6 very special technique was already out there.

7 And finally, I'm going to have to
8 spend a little bit of time talking about a
9 reasonable royalty, because ACI has spent so
10 much time talking about that issue.

11 Let me start with the first issue
12 of how Google uses a different approach. From
13 the very beginning of this trial, we have tried
14 to help you understand that it is about the
15 claim language. And you have heard directly
16 from the Court that that's what it's about.
17 This case isn't about some generic descriptions,
18 it's the about the claim language.

19 What did the Court tell you? You
20 must pay careful attention to the language of
21 the claims. It is the claims and not the rest
22 of the patent that define the invention that ACI
23 has the right to exclude others from using.
24 Only if you decide that an accused Google Earth

1 product performs each and every one of the steps
2 in a claim is that claim infringed by that
3 product.

4 When did ACI show you the language
5 of those claims? It wasn't in their opening.
6 It wasn't when they had the inventors on the
7 stand. ACI didn't even show you the language of
8 the claims until Dr. Castleman came and
9 testified.

10 And I was kind of watching today.
11 When is ACI going to show the jury the language
12 of the claims that define this invention? He
13 had talked for fifteen minutes before he even
14 showed it. And you know what, he still hasn't
15 told you what the invention really is about.
16 Instead they just want to use some vague
17 descriptions and hope that you'll agree with
18 them.

19 That's not what we want to do. We
20 wanted to help you to understand what is the
21 invention really about. They opened this trial
22 by telling you that this invention was about
23 flying. In fact, he told you about that again,
24 it's the flying invention. This invention isn't

1 about flying. Flying has been known for a long
2 time. You saw this patent in evidence. This is
3 known as the global mapping patent. This is
4 almost ten years before their patent and talks
5 about how you use a computer to fly to that
6 location in a step zoom mode.

7 They even admitted, Mr. Mayer on
8 the stand, that flight simulators, the ability
9 to fly around, that isn't something he invented.
10 He was asked:

11 "Question: Another kind of
12 computer system used to visualize geographic
13 data were flight simulators; right?

14 "Answer: There were Flight
15 simulators at that time, they existed, yes."

16 And then at the end:

17 "Question: You didn't invent
18 flight simulators, did you?

19 "Answer: No, we didn't claim that
20 either. "

21 They brought in two of the
22 inventors to testify for you. And did they ask
23 the inventors what is this invention, what is it
24 about? No. They told you about a ball. They

1 brought the ball in. The ball is kind of cool.
2 But the ball isn't the invention, and that's
3 what they told you. You can look through that
4 claim language and it doesn't mention the ball
5 even once. In fact, he said it's just any
6 pointing device.

7 They told you about a couple of
8 technical things that they had solved. They
9 talked about texturizing. Okay, maybe that is a
10 technical problem that they had to solve with
11 their demonstration. But if you go through the
12 patent language, do you see the word texturizing
13 in there? Do you see anything that describes
14 this patent and these claims related to
15 texturizing? No.

16 There was one other technical
17 problem they told you they solved. They talked
18 about this floating point precision problem,
19 that is you have this much data, you only have
20 so many numbers to keep track of it. So as you
21 get closer to something, you literally run out
22 of space and it gets too fuzzy. He said that's
23 a problem we solve.

24 Okay. That's fair. I want to

1 give them credit where credit is due. They do
2 at least mention that in the patent. It's not
3 in claim 1, though, it's in claim 3 where it
4 talks about converting one coordinate system
5 into another coordinate system. I asked the
6 inventor, "Mr. Mayer, did you invent that idea?"
7 And he said no.

8 "Question: You also didn't invent
9 the idea of converting one coordinate system
10 into another coordinate system, did you?

11 "Answer: No.

12 "Question: People have been doing
13 that for probably about as long as there have
14 been coordinate systems; right?

15 "Answer: Yes, that's right.

16 "Question: Something that existed
17 long before you applied for your patent in
18 December of 1995; right?

19 "Answer: Yes."

20 They didn't invent this thing that
21 they added on to claim 3. That might have been
22 a problem that they solved for their
23 demonstration, but it's not what this patent is
24 about.

1 Well, then they said this patent
2 is about going from coarse to fine. And you
3 heard him again today, well, it's about coarse
4 to fine. Mr. Goodchild admitted that what
5 Google does is go from coarse to fine, and
6 therefore, tad ah, they infringe.

7 This patent isn't about just going
8 from coarse to fine. It's about a very specific
9 method of going from coarse to fine.

10 I asked their inventor,
11 Mr. Schmidt, whether they invented coarse to
12 fine. I asked him, "Aren't there other ways to
13 do it?" And he said, "Yes."

14 This is Mr. Schmidt's testimony:

15 "Question: There are various ways
16 of doing coarse to fine images, there is not
17 just one; correct?

18 "Answer: Sure, there are
19 different -- yeah.

20 "Question: My question was did
21 you invent every possible way of going from a
22 coarse image to a fine image?

23 "Answer: Every possible way?
24 No."

1 They didn't invent coarse to fine.
2 So when ACI stands up and they say, Google Earth
3 does coarse to fine, just look at it, therefore
4 they infringe. That's not evidence. That
5 doesn't meet the claim language. That doesn't
6 satisfy the instructions that the court has
7 given you to apply the words of the claim. What
8 do the words of the claim look like?

9 Well, there is a whole lot of
10 them. And it takes a long time to read them.
11 And it's kind of complicated and it's kind of
12 hard to put it into context, but we wanted you
13 to understand what the claim is really about.

14 So we asked Dr. Goodchild to come
15 in and explain what that claim means in the
16 context of what you would see on a computer.
17 And he said if you go through steps A through E,
18 you'll get an image on a computer, and we don't
19 dispute for this trial that Google Earth does
20 step G.

21 What happens in step F according
22 to patent claim. According to the language of
23 the patent, you have to divide that image, then
24 you have to request it, then you have to store

1 and represent it on the computer.

2 You have to go through all of
3 those four steps before you get to the repeating
4 step, step G. Then what do you do? You take
5 one of those smaller images and you divide it,
6 and it gets stored, and it gets represented. It
7 gets shown on to your computer.

8 Then what you have to repeat it
9 again. And you take another one. And you keep
10 doing that process over and over until the
11 entire image gets down to the level of detail
12 that you want. That you have that level of
13 precision that you want. And Dr. Goodchild
14 said, this is my analysis of how this would
15 really work in practice, this is what these
16 claims mean.

17 And after Dr. Goodchild testified,
18 what is the evidence that ACI put on to say
19 nope, Dr. Goodchild got it wrong, that's not the
20 way it works.

21 There wasn't any. And it wasn't
22 because they didn't have the opportunity.
23 Doctor Castleman came back and they asked him
24 one question and I'm going to get to that in a

1 minute. But did they ask him, was Doctor
2 Goodchild's description of the patent wrong?
3 No. They didn't ask him that. Did they put on
4 one of the inventors to say that's not how it
5 works? No. What was the evidence to say this
6 isn't the accurate description? There wasn't
7 any.

8 So now let's talk about how Google
9 Earth got developed. But before that, one quick
10 point. And there's something the Judge said and
11 I want to make sure we all understand so we're
12 on the same page here. We can test, Google can
13 test that Google Earth practices Step F and Step
14 G of Claim 1. Now, there are three other
15 dependent claims, Claims 3, 14 and 28, but if
16 Google doesn't infringe Claim 1, then it can't
17 infringe those other three claims and that's
18 what the Court told you, because a dependent
19 claim incorporates all of the features of the
20 independent claim it refers to. If you find
21 that an independent claim is not infringed, then
22 the claims that depend on that independent claim
23 cannot be infringed. Well 3, 14 and 28, all
24 dependent claims on Claim 1. So if Google Earth

1 and Google do in the infringe Claim 1, they
2 cannot infringe those other three claims.

3 Now, let's talk about Google Earth
4 and where Google Earth came from. You've heard
5 all this, so I want to summarize it for you, but
6 you heard from Mr. Michael Jones. And he's here
7 in the courtroom today. Mr. Jones came and
8 shared with you his description in history of
9 his passion for this area and his passion for
10 this product. He described for you his history
11 in the global visualization, this general area
12 going back to the early 1980's and how when he
13 had an opportunity after he left Silicon
14 Graphics he wanted to start, and built a demo
15 that would do this process of allowing people to
16 zoom around and get in detail images of anywhere
17 in the world. He and three of his colleagues
18 designed and built that demo in his dining room.

19 They then took that to another
20 company called Intrinsic Graphics and you heard
21 him describe how it was not part of the general
22 business plan at Intrinsic Graphics, because
23 what they were doing there was making software
24 for games. But this was his passion. He still

1 wanted to pursue this product so they spun it
2 off and they created Keyhole. And they
3 introduced a product called EarthViewer and you
4 heard Mr. Jones describe how EarthViewer became
5 a popular system for visualizing the earth. It
6 actually attracted national attention. CNN used
7 it to visualize world events.

8 When ACI contacted Google about
9 Google Earth after Google purchased Keyhole and
10 after they released it as Google Earth, what did
11 ACI say? Did they say you've copied our patent?
12 Did they say, you're doing what we do? No.
13 What Mr. Mayer said then in January of 2006 is
14 that you succeeded where we failed. And what
15 did he say back then when he first contacted
16 him? He said you figured out most of the same
17 things on your own and you had a lot of new
18 ideas we never thought about. A lot of new
19 ideas. And you know what, one of those new
20 ideas was this way from going from course define
21 that is different than the way they describe in
22 the patent. Mr. Jones knew immediately that
23 there was a different.

24 When Mr. Mayer sent that note to

1 him in January of 2006, he sent the patent with
2 it. Said so right in the e-mail that you all
3 saw. And Mr. Jones was able to read it and he
4 was asked, what did you think about that patent?
5 And he said I felt it would be sufficiently
6 inferior to what we already did that I couldn't
7 imaging downgrading Google Earth to that. They
8 didn't want to do it the way they describe it in
9 Claim 1. They didn't want to infringe on the
10 patent, because they were doing something
11 different.

12 They've told you this story of the
13 development several times. They told you in
14 opening, they told you again in closing, but
15 let's be very clear. The Court has instructed
16 you that ACI does not contend that Google copied
17 the invention claimed in the patent. That's not
18 what this case is about. This case is about
19 comparing how does Google Earth work to the
20 claims of the patent. And when you do that, how
21 does it actually work? It's very clear that it
22 does not infringe. And there are two reasons
23 for that. One is it does not do Step F. Step F
24 requires in one particular subsection that you

1 have to request the higher resolution
2 space-related data for each, each of the smaller
3 sections. So first you divide it, then you have
4 to request that data for each of the smaller
5 sections. You have to do it for each one of
6 them. Not some of them, but it has to be every
7 one of them. Now, Doctor Castleman and Mr.
8 Birch came and explained to you how Google Earth
9 works and apparently ACI thinks we should have
10 brought somebody else. Well, we thought that if
11 we brought the person who knows more about this
12 product than probably anyone in the world, that
13 would be the right person. Peter Birch is the
14 Senior Product Manager for Google Earth. It's
15 true. He didn't write all the code. He didn't
16 write the code. He was the manager for the
17 product for 10 years. And he testified to you
18 he knows the code. They didn't try and test him
19 by showing him any code, but what did he do for
20 you? The amount of code is enormous for a
21 product like this, and what did he do? He tried
22 to explain to you how the product works. That
23 sounds like the right kind of person to testify
24 to me.

1 Doctor Goodchild came as well.
2 And he said I've looked at the code, it took me
3 hundreds of hours. I've looked at the code and
4 this is the way it works. And he described it
5 for you and what did he say? He said well, you
6 start with an image, and then you divide it.
7 I'm sorry, yes, this is the '550 Patent, so let
8 me go forward. I want to show you what this
9 each means in the context of the '550 Patent. I
10 appreciate my partner over here, Mr. Williamson,
11 making sure I don't go off track.

12 You have to start out by dividing
13 each one of the sections, so you divide it in
14 onto two, then you have to request the data for
15 each of those smaller sections, you have to
16 store them, you have to represent them. Okay.
17 You have to do it for every one of those
18 children nodes every time, divide and then you
19 request each of those. And then you repeat that
20 step each time. Now, what does that mean
21 compared to Google Earth? This is the
22 information -- I'm making noises. This is what
23 Doctor Goodchild showed you. It's very similar
24 to the one that Mr. Birch showed you. You start

1 with an image on your computer and then it
2 starts going through what they called the
3 metadata tree, traversing this tree and it goes
4 all the way down to the desired level of image.
5 It follows that entire tree within the field of
6 view. And it creates a list of all the
7 different possible nodes, all of the images that
8 you might need that fit within that field of
9 view. After its done all of that process, after
10 its done what the patent describes as the
11 dividing step, traversing this tree, then it
12 does something else. It prioritizes all of
13 those nodes. It moves them around and says
14 which ones are more important and it puts those
15 at the front. And then and only then does it
16 start requesting them. And it requests several
17 of them at a time. You heard Mr. Birch explain
18 how they are like workers, and they all go out,
19 we don't know how fast they are going to get
20 back but we send them out and when they come
21 back, then we display them if we still want
22 them.

23 So in this example B1 came back
24 first even though it's not at the level of

1 detail we want, so we display it, but then we
2 start seeing images for the level of detail that
3 we desire and we display those, and they come
4 back -- once we get all of those, the process of
5 the claim, Claim 1 stops. But that happens in
6 Google Earth before all of the images are
7 requested. And remember, you have to request
8 each of the subsections. But in Google Earth we
9 don't do that. So if you change that metadata
10 tree to compare what you start with to just what
11 you end up requesting, it's far, far less than
12 all of those images.

13 Now, you heard testimony from Mr.
14 Birch that this process does not request each of
15 the subsections. He was asked, in the approach
16 used by Google Earth products, are all of the
17 traversed nodes requested before drawing the
18 final scene? Answer, are all of the traversed
19 nodes requested? No. In fact, as you can see
20 in this example we haven't requested all the
21 nodes on this list, we've only requested a
22 portion of them. And he was asked why? And he
23 explained it. And it turns out that this
24 explanation is very helpful. Question, why does

1 Google Earth not request the image for each node
2 that is traversed? Answer, so as I mentioned
3 earlier, what we're really trying to do is
4 what's important is getting the final image to
5 the users as quickly as possible, right? And we
6 want it to feel fast and so we don't want to
7 mess around doing things that don't help us
8 achieve that goal. And so to do that, we're
9 going to prioritize -- you know, by
10 reprioritizing nodes we get to that answer
11 sooner. Doctor Goodchild told you the same
12 thing. And he explained to you that within this
13 process they've been smart enough to skip the
14 nodes that they don't need. Now, they
15 criticized Doctor Goodchild for not showing you
16 a bunch of source code that we really didn't
17 think was going to be helpful. I mean, it's
18 like somebody saying if you want to understand
19 an airplane, let's pick 15 or 20 different
20 random pieces and show somebody and tell them
21 they're supposed to understand how an airplane
22 works. No. Isn't it much better to get
23 somebody who actually helped the product manager
24 for the airplane, somebody who studied all the

1 parts of the airplane and then have them explain
2 what the airplane does? That's what we tried to
3 do. And we hope that that was more helpful to
4 you. They showed Doctor Goodchile one line of
5 code and they said ta da, it has course define
6 in it, so doesn't that mean we infringe? They
7 took one line of code, they didn't give him any
8 context at all. He said I need to study this
9 and now somehow they think that means you
10 shouldn't believe Doctor Goodchile. He studied
11 all the code and he was the one who explained to
12 you that this is how it works.

13 Then they showed him another
14 document about Google Earth. And they said
15 well, doesn't this document say course define?
16 But they didn't show him the rest of that
17 document. If you actually look at the rest of
18 that document and this is Plaintiff's exhibit
19 75, it actually says, explicitly avoid rendering
20 nodes less than quarter quality. Avoid
21 rendering nodes. Skip them. That's the -- that
22 was their aha moment with Doctor Goodchild.
23 Doctor Castleman was actually asked on direct
24 about this process and he admitted that Google

1 Earth does not go through this process of
2 requesting and representing and displaying every
3 node. And this was on direct testimony from his
4 own attorney. Question, what are these
5 comments, testimony about what call children is
6 doing? Answer, it says there is no need to call
7 the children if we don't compare Lod metrics and
8 that was level of detail. That means -- what
9 that means is there is no need to download the
10 images in those child nodes if they don't meet
11 the level of detail criteria. There's no need
12 to download those child nodes if they don't meet
13 the level of detail criteria. That's the
14 difference.

15 In Google Earth they use a smarter
16 system that picks and chooses and it does not
17 request each of the subsections and that's why
18 it does not infringe. Doctor Goodchild put them
19 side by side and said if you look at these two,
20 they are very different. Here's what the patent
21 describes, here's what Google Earth does and
22 those are two different things. And when Doctor
23 Goodchild was done testifying, what evidence did
24 ACI put on to tell you that he was wrong? Did

1 they bring Doctor Castleman back and say nope,
2 Doctor Goodchild made a mistake. That is not
3 how Google Earth works. Mr. Birch is wrong,
4 that is not how Google Earth works. Let me show
5 you some more source code fragments. No, there
6 wasn't any evidence.

7 Now, let me turn to the next
8 reason why Google Earth doesn't infringe. And
9 that's because it does not do Step F. In other
10 words, it doesn't repeat -- it doesn't do Step
11 G, it doesn't repeat Step F. The Court has
12 actually told you, given you some constructions
13 that are important to this that help understand
14 the requirements and the relationship between
15 Step F and Step G. In Claim 1, Step F, the
16 substep of dividing must be performed before the
17 substep of requesting. So you have to divide
18 and then you can send the request out. And Step
19 F must be performed before Step G. And so Step
20 F has four subparts. You have the dividing
21 step, where the image is broken into pieces,
22 whether it's two or four or eight or something
23 else. And then it has to be requested and then
24 it has to be stored and represented. Step G

1 says, now you have to repeat that. And you can
2 do that over and over until the image is at the
3 desired level of resolution. And because this
4 is a pretty complicated image, it actually takes
5 a little while to get to the end of it. But at
6 the very end what you've done is traversed
7 through each one of those nodes and you have to
8 divide, then you have to request, then you have
9 to store and display and then you have to do
10 that again, you have to repeat it.

11 But what does Google Earth do? It
12 doesn't do that. It uses that process that I
13 just described of traversing the tree first,
14 then picking some to request, then picking some
15 to store and display. It's a completely
16 different process. It doesn't go through that
17 four step process that's in Step F and then
18 repeat it over and over again. It's doing it
19 completely differently. Now, after that was
20 done, and after that was demonstrated, Doctor
21 Goodchild explained that that means that it does
22 not perform Step G. He was asked the question,
23 can you demonstrate how Google Earth works
24 instead of as it relates to Step G? Yes. So we

1 traverse the tree and place items into the list,
2 but there's no question here of repeating
3 because the dividing does not lead to
4 retrieving, storing and representing and we can
5 proceed to further divisions without executing
6 all of Step F. Mr. Birch explained the same
7 thing. And he says particularly in the context
8 of the illustration that he had given you about
9 child nodes and parent nodes, he said can you
10 request a child node before you've displayed the
11 parent node, because in the claim you couldn't
12 do that. You'd have to request it, store it and
13 display it before you would repeat that process.
14 And so he was asked, can you do that? And his
15 answer was yes, absolutely, because of this
16 process, where we're potentially or we're
17 fetching the child nodes ahead of other nodes,
18 then they can potentially be displayed before
19 they are fetched, before the parent would be
20 fetched. That is the difference. And that's a
21 difference that Doctor Castleman didn't even
22 consider. It's not like he showed you source
23 code about how this works. He was asked, did
24 you consider this issue and here is his answer.

1 Question, I'm just asking whether you did any
2 analysis that would address the question of
3 whether any nodes get ignored after the data has
4 been requested for them? Answer, I don't recall
5 specifically looking at that question. Then he
6 was asked about the specific question of
7 infringement related to Step G. Wouldn't you
8 agree with me that if Google didn't perform all
9 the steps, the substeps of Step F of Claim 1, it
10 could not infringe Step G, correct? Answer, I
11 don't recall specifically looking at that
12 question, but as we sit here today it strikes me
13 that the answer to your question is yes.

14 Now, Doctor Goodchild and Mr.
15 Birch came and explained how Google Earth works.
16 And they explained how it doesn't do this
17 repeating step in Step G. And they brought
18 Doctor Castleman back. And they asked him one
19 question. They didn't ask him about Step G,
20 they didn't ask him whether the description of
21 Google Earth was wrong. They didn't ask him
22 about whether the description of the patent was
23 wrong. They didn't ask him. They didn't put on
24 any evidence at all related to this issue once

1 we heard the descriptions of how the claim
2 really works and how the patent and how Google
3 Earth really works. They brought him back to
4 answer one question. It was actually a really
5 good question. It came from one of you.
6 Somebody asked, how can Google Earth present a
7 smooth image if you don't perform all the
8 substeps of F? And Doctor Goodchild was asked
9 that question. And you know what his answer
10 was? Well, sometimes it's not smooth. If your
11 internet connection is fast, it will be smooth,
12 because it's going to go to the level of detail
13 as quickly as possible. But if your internet
14 connection is slow, you might see some
15 jerkiness, you might see some broken images in
16 the middle. And ACI brought Doctor Castleman
17 back and they asked him one question and they
18 asked him that question. And I listened to his
19 answer and he said almost the same thing as
20 Doctor Goodchild. He said, you know, you don't,
21 because you would see this jerkiness as you're
22 waiting for the images to come back. That's
23 exactly what Doctor Goodchild said.

24 Now, Doctor Castleman apparently

1 comes to a different conclusion. He says that
2 we infringe, but he didn't bother to explain
3 that. He didn't say that Doctor Goodchild was
4 wrong in his explanation of the product. He
5 just answered that question and then he left.
6 They didn't recall any of the inventors to tell
7 you that the description of the patent was
8 wrong. What was the evidence that they put on
9 once we had tried to explain to you, the jury,
10 what the patent requires and how Google Earth
11 works and how it's different? What was that
12 evidence? There wasn't any.

13 Now, you're going to get a verdict
14 form at the end of this process and it's going
15 to have some questions on it. And this is the
16 first question. Do you find that ACI has proven
17 by a preponderance of the evidence that Google's
18 use of the accused Google Earth products
19 infringes the following claims of U.S. Patent
20 No. RE44550? You should answer that no. And
21 Claim 1, Google Earth does not infringe Claim 1
22 because it does not do all the steps of Step F
23 and it does not repeat as required by Step G.
24 And because Google Earth does not infringe Claim

1 1, you should find that it does not infringe the
2 others either.

3 Now, let me turn to the next topic
4 and that is that ACI is trying to own public
5 methods -- ACI is trying to claim for their own
6 something that should belong to the public.
7 They made a big issue this morning about the PTO
8 having looked at this patent and having looked
9 at it three times, but you heard from the Court,
10 patents issued by the Patent and Trademark
11 Office are presumed to be valid, but not all
12 patents that are issued by the PTO are, in fact,
13 valid. That's the job for you to decide based
14 on the evidence that's in front of you.

15 They've also made a big deal of
16 telling you, well, ACI has gone back to the
17 Patent Office and they've told the Patent Office
18 that we're coming to you because we have this
19 extra art. This is what they said in their
20 opening. They said hey, we've been told there
21 are these problems. Can you check to see if
22 there really are? Now, I want to be fair. They
23 did submit some more prior art. But they didn't
24 submit everything that you've heard about during

1 this trial. And more importantly, or at least
2 something you should consider, when they
3 submitted it to the Patent Office the first
4 time, they didn't tell the Patent Office hey,
5 we've got this prior art, you want to look at
6 it? Let's look at what they actually told the
7 Patent Office was the reason they wanted to
8 submit it.

9 This is from the declaration from
10 their CEO Andreas Wiek and he says I believe the
11 original patent to be wholly or partially
12 inoperative or invalid for the reasons described
13 below. Claims 1 contain errors with antecedent
14 basis, specifically the first occurrence of
15 several claim terms such as the term selection
16 in subparagraph B are preceded with the rather
17 than A. And the second occurrence concerning
18 pictorial representation in the body of the
19 claim in subparagraph F is preceded by the A
20 rather than the. Rather the specification
21 contains several translation errors from the
22 priority German application. He didn't say
23 we've got a bunch of other art we want you to
24 look at. This is what he told the Patent

1 Office. Now, they looked at it and they
2 reissued the patent. But when they reissued it,
3 when they looked at it, they did not have all of
4 the evidence that you have seen. And in
5 particular, they did not have the testimony of
6 Stephen Lau that you heard from that witness
7 box. They also did not have other information
8 about the TerraVision system. They did not have
9 the TerraVision video. They did not have some
10 of the documentation about the demonstrations in
11 the Magic system. All of that was available
12 only to you.

13 But of all the people that they've
14 been unfair to in ACI, Mr. Lau has got the top
15 of the list. What ACI's lawyer just told you is
16 well, they talked to Mr. Lau. They had his
17 testimony. And well, they had some testimony,
18 but the PTO did not talk to Mr. Lau. You never
19 heard that. They had testimony that he gave in
20 another litigation 10 years ago in 2006. Mr.
21 Lau came here and he talked to you directly and
22 he answered all of their questions and he
23 explained to you what their system was, where he
24 demonstrated it and how it was used. And we

1 went through all of the documents showing that.

2 Now, the Court -- they've raised
3 an issue about whether the TerraVision system
4 that Mr. Lau and Mr. Leclerc developed was
5 actually in public use. And the Court has given
6 you instructions on what it means to be in
7 public use. It says SRI's TerraVision was in
8 public use if it was accessible to the public.
9 To prove that SRI's TerraVision system was used
10 publically, Google must show by clear and
11 convincing evidence that it was accessible to
12 the public prior to December 17th, 1995. If the
13 SRI's TerraVision system satisfied those
14 requirements, it qualifies as prior art.

15 Well, the evidence is pretty clear
16 and convincing that it does. In fact, the only
17 evidence you've heard is that Mr. Lau
18 demonstrated the TerraVision system at least
19 twice before that critical date in December of
20 1995. He was asked about the demonstration, the
21 public demonstrations that he did. And he
22 mentioned that they demonstrated it in multiple
23 locations, including the 1994 Magic Technical
24 Symposium and also at SIGGRAPH '95. And during

1 those he described how they had live
2 demonstrations, retrieving data from across the
3 network, across the magic network and also
4 showing the video. Showing how that system
5 worked and making it publically available. And
6 when you look at those dates in August of 1994
7 when the Magic Symposium was shown and in August
8 of 1995 at SIGGRAPH, that is more than one year
9 before the date that they filed for their U.S.
10 application. And as a result, their application
11 is too late. That information belongs to the
12 public. We know that we should believe, you
13 should believe what Mr. Lau tells us. He was
14 very firm in his recollection that he had met
15 with at least three of the inventors while he
16 was there. And described for you how ACI
17 actually had their demonstration just on the
18 other aisle. He actually told you about how he
19 gave them the source code for his project, which
20 most of the time you would think is a somewhat
21 unusual thing. People are supposed to protect
22 their source code and keep it confidential.

23 But Mr. Lau described for you how
24 he and Mr. Leclerc and the entire TerraVision

1 project were designed to make this public, to
2 take this information, and this knowledge about
3 global visualization and make it public for
4 everybody.

5 TerraVision was a federally funded
6 product that was meant to be put in the public
7 domain so people could use these algorithms in a
8 spirit of corroboration. So they provided their
9 source code to the people at ACI. But ACI has
10 an unfortunate history when it comes to dealing
11 with TerraVision and SRI. And, in fact, you
12 heard Mr. Mayer admit that he was describing his
13 system to Mr. Leclerc in E-mails, he was less
14 than truthful. I asked him:

15 "You didn't tell Mr. Leclerc that
16 there was an aspiration or a goal or a desire,
17 you told him we already set it up?

18 "Answer: Yes, I told him that and
19 that wasn't completely truthful.

20 "Question: It wasn't completely
21 true, was it?

22 "Answer: No."

23 So when you look at the evidence
24 that's available to you and you're asked the

1 question on the verdict form, did you find that
2 Google has proven by clear and convincing
3 evidence that SRI's TerraVision system was
4 publicly used before December 17, 1995, you
5 should answer that yes.

6 Now, then you heard Dr. Goodchild,
7 and he compared the disclosures about the
8 TerraVision system, what about Lau said and the
9 information that's been made available to you
10 about that system. He said let's compare them
11 and see, does that disclose what is in claim 1.

12 There is an instruction here
13 that's particularly important and that relates
14 to how you understand those references. To
15 anticipate a prior art reference does not have
16 to use the same words as the claim, but all the
17 of the requirements of the claim must have been
18 present so that a person having ordinary skill
19 in the art could make and use the claimed
20 invention based on that knowledge.

21 Well, Dr. Goodchild went through
22 and he showed you how each one of those claims
23 is described. And what did they do on
24 cross-examination? They came up and they wanted

1 to fight and spar with Dr. Goodchild whether
2 this word was exactly the same as the word that
3 was in the patent or whether the patent word was
4 exactly the same as the word that was in the
5 documents that they had about the TerraVision
6 system.

7 But the instruction says the words
8 don't have to be exactly the same. And after
9 Dr. Goodchild was done and he had explained to
10 you how all of these requirements are met, what
11 was the evidence that ACI put on to say that
12 Dr. Goodchild was wrong, to say that nope, he
13 has misinterpreted TerraVision. SRI TerraVision
14 does not anticipate. What was that evidence?
15 There wasn't any.

16 Dr. Goodchild explained the same
17 thing for you for the other three dependent
18 claims and showed how they're disclosing
19 TerraVision and as a result you should find that
20 those are disclosed and anticipated as well.

21 This is going to be question
22 number three on your verdict form. If you
23 answered yes to question number two, do you find
24 that Google has proven by clear and convincing

1 evidence that SRI's TerraVision system
2 anticipates, that is constitutes a public use of
3 any of the following claims of the US patent
4 number RE 44550.

5 And the answer to that should be
6 yes, because in every one of those instances,
7 the system that Mr. Lau demonstrated in 1994 at
8 the MAGIC conference and in 1995 at Siggraph, it
9 is a public use of every one of those claims.

10 Now there is a further question
11 related to this because this has to be broken in
12 subparts. His Honor described for you when
13 you're dealing with invalidity, you got
14 anticipation or public use, and you also have
15 obviousness.

16 If you answer no to question
17 three, if you don't think that it's anticipated,
18 then you get another question. And this
19 question is going to ask you about obviousness.
20 Do you find that Google has proven by clear and
21 convincing evidence that any of the following
22 claims of US patent number RE44550 are invalid
23 as obvious based on SRI's TerraVision system and
24 the knowledge of a person of ordinary skill in

1 the art at the time of the alleged invention?

2 You should answer those questions
3 yes, if you get to this question. If you think
4 for some reason the differences in the words are
5 important enough that it's still not the same
6 concept as described by Dr. Goodchild, it's
7 still rendered obvious and you should answer yes
8 for Google.

9 Let me turn to the other piece of
10 prior art. And that's the T_Vision System.

11 Did you hear ACI's lawyer talk
12 about this publication at all? You heard
13 Dr. Goodchild, you heard Dr. Goodchild on the
14 stand, and he explained how this system and you
15 -- I'm sorry, how this paper renders invalid
16 their claim. But you didn't hear any evidence
17 at all from ACI, you didn't even hear any
18 argument from ACI about how that's not true.
19 Just like the TerraVision system, they got a
20 number of disputes about this T_Vision paper.
21 First they say it wasn't demonstrated, it wasn't
22 distributed to anybody. We went through with
23 Mr. Lau on the stand to show that it was on the
24 CD-ROM. We actually put the CD-ROM into the

1 computer. It was read into the computer. He
2 looked at the screen and clicked on the location
3 for the T_Vision paper and up it came, looking I
4 think pretty much identical to this. That
5 CD-ROM was distributed at Siggraph 95 in August,
6 and that was more than a year, several months
7 more than a year before ACI filed its US
8 application. Under the law that the Court has
9 given you, that means that their patent is
10 invalid. It was simply too late.

11 You're going to get a couple of
12 different questions related to this T_Vision
13 paper. The first of those questions is whether
14 it's a printed publication. And the Court has
15 instructed you that it's a printed publication
16 only if it was accessible to the public prior to
17 December 17, 1995.

18 Well, we know that it was. The
19 evidence, the only evidence that's available to
20 you is that it was. You heard from Bernard
21 Rous, he's the director of publications for the
22 Association of Computing Machinery. They're the
23 organization that runs Siggraph 95. And he came
24 by videotape, but you did get to hear his

1 testimony. And he explained to you the whole
2 process of how these CD-ROMs work. He was
3 asked:

4 "Were any materials given to
5 attendees of Siggraph 95?

6 "Answer: Yes. Generally speaking
7 the attendees are given the CD-ROMs that are
8 produced as hard copy."

9 Mr. Rous told you he didn't know
10 specifically whether that happened at Siggraph
11 95, but this is the way it normally works. You
12 also got some evidence about whether it actually
13 happened at Siggraph 95. Mr. Lau was asked that
14 question, because he was there, and there is no
15 doubt that he was at Siggraph 95.

16 "Question: Were you given any
17 materials as part of your attendance at that
18 conference?

19 "Answer: Yes, all the attendees
20 received a printed proceeding from the
21 conference itself and also a CD-ROM containing
22 electronic versions from the conference itself."

23 What was ACI's evidence that those
24 CD-ROMs were not distributed? Did they come in,

1 did they have anybody testify that that didn't
2 happen, that they didn't show up? What was that
3 evidence?

4 There wasn't any. So you're going
5 to get this question number five on your verdict
6 form. Do you find that Google has proven by
7 clear and convincing evidence that the T_Vision
8 paper was a printed publication before December
9 17th, 1995? And you should answer that yes.

10 And you're going to get a similar
11 question about the contents of that T_Vision
12 paper. Dr. Goodchild looked at that paper and
13 went through each one of these elements and he
14 showed you in the paper where each one of these
15 elements is found and he checked them off one at
16 a time.

17 And when he was done, he had
18 finished testifying, what was the evidence that
19 ACI put on to say nope, that's wrong. You have
20 read that paper incorrectly, that's not what it
21 said.

22 Did they have Dr. Castleman come
23 and tell you that Dr. Goodchild was mistaken?
24 No.

1 Did they have one of the inventors
2 and authors of this paper come in and tell you
3 that Dr. Goodchild was mistaken? No.

4 What was that evidence that ACI
5 wants you to believe shows that somehow
6 Dr. Goodchild was wrong and that the T_Vision
7 paper does not anticipate or render obvious
8 these claims? There wasn't any.

9 Dr. Goodchild went through the
10 same process for claims 14 and 28, and because
11 of that, because of that evidence, you should
12 find that the T_Vision paper anticipates these
13 three claims, 1, 14 and 28 of the patent. This
14 is question number six on your verdict form. If
15 you answered yes to question number five which
16 is the one about whether it's a printed
17 publication, do you find that Google has proven
18 by clear and convincing evidence that the
19 T_Vision paper system anticipates any of the
20 following claims? And you should answer yes for
21 each of those.

22 Dr. Goodchild admitted that when
23 it came to claim 3, that changing of the
24 coordinate system, he had the T_Vision paper

1 does not explicitly disclose that. So what did
2 he do? He said you have to look at what someone
3 of ordinary skill in the art would understand,
4 and you have to look at what other information
5 was available. And he said there is another
6 paper that describes that very process. And
7 that's that global mapping patent that I showed
8 you that describes flying at the beginning of my
9 presentation this morning.

10 This is that. He pointed out to
11 you that it includes and describes presenting
12 mapping data in a collected or compensated
13 projection format departing from said Mercado
14 projection. In other words, if you started with
15 the Mercado projection, then you present it in a
16 different, a corrected or compensated
17 projection. If you put those two together like
18 a person of ordinary skill in the art would,
19 that renders obvious this claim.

20 So you're going to get a specific
21 question on your verdict form related to claim
22 number 3 with the T_Vision paper in combination
23 with the global mapping patent and someone of
24 ordinary skill in the art, and based on that,

1 based on all the evidence that you have, you
2 should answer that question yes.

3 Now, I need to turn for a few
4 minutes and talk about determining a reasonable
5 royalty. I really don't like to talk about this
6 subject. This is the last question that you're
7 going to get on your verdict form. And the
8 reason I don't like to talk about this subject
9 is I don't believe that you need to consider
10 this issue.

11 What the Court told you is that
12 you only need to -- you only reach the damages
13 question if you find that Google's products
14 infringe at least one claim that has not been
15 proven invalid.

16 And I believe that the evidence is
17 very, very strong. It exceeds the burden of
18 proof, the preponderance of the evidence that
19 the patent does not infringe by Google Earth.
20 And I believe that the evidence is more than
21 clear and convincing that those claims are
22 invalid. But if you disagree, then we had
23 Mr. Reed come and explain to you the process
24 that you ought to go through in the context of

1 the instructions that the Court has provided.

2 And what did the Court tell you?

3 That you have to put this in the context of what
4 these parties would have agreed to in June of
5 2005. A reasonable royalty is the amount of
6 royalty payment that a patentholder and the
7 infringer would have agreed to in a hypothetical
8 negotiation taking place at a time just before
9 when the infringement first began. In this
10 case, the hypothetical negotiation would have
11 occurred in June 2005, when Google Earth was
12 introduced.

13 Well, what is the best evidence of
14 what the parties would have agreed to in a
15 hypothetical negotiation in June of 2005. Maybe
16 it's what they were actually talking to each
17 other. ACI's lawyer put up a list of those
18 communications, he didn't show you the detail,
19 he said you seen them enough, they're hard to
20 read, we don't want to talk about it.

21 Instead, he said what you ought to
22 pay attention to an e-mail that Mr. Mayer sent
23 four years later in 2010. He said that's a
24 better description of what the parties would

1 have agreed to in June 2005. That doesn't make
2 any sense. If you want to understand what the
3 parties thought at the time, look at what the
4 parties said to each other at the time.

5 And that's what the Court has told
6 you you should do. In considering this
7 hypothetical negotiation, you should focus on
8 what the expectations of the patentholder and
9 the infringer would have been had they entered
10 into an agreement at that time, and had they
11 acted reasonably in their negotiations.

12 Well, Mr. Reed went through the
13 process of all of the Georgia-Pacific factors he
14 called them, the list of 13 or 14 or 15 factors,
15 and he explained to you what all of that would
16 mean in the context of a hypothetical
17 negotiation in June 2005. He looked at all of
18 those factors and he summarized it this way.
19 What was the evidence that he showed you about
20 the lump sum payment that he said these parties
21 would have agreed to in June 2005?

22 One of the things he looked at was
23 comparable licenses. He said I found a license
24 that I believe is economically comparable,

1 Dr. Goodchild found that it was technologically
2 comparable. It actually licenses more patents.
3 But Google only paid \$600,000 for it. \$600,000.

4 Now, he said it probably would
5 have been moved up a little bit, therefore he
6 thought it was consistent with his opinion of no
7 more than \$3 million. There was another aspect
8 of Google's licenses that he found particularly
9 important, and that is that Google always enters
10 into lump sum agreements. He reviewed evidence
11 about more than 100 agreements, every single one
12 of them was a lump sum agreement.

13 And there was a very good reason
14 for that. And it relates specifically to the
15 kinds of things ACI wants you to believe now.
16 He had a big part of the reason for that, is
17 because it gives them the freedom to operate.
18 Google can decide what it wants to do with that
19 technology. It can use it a little bit. It can
20 use it a lot. If it uses it a little bit or a
21 lot, it doesn't have to keep track of every time
22 it uses it. It can make those decisions in the
23 future because it doesn't know what it's going
24 to do with it them. Google always enters into

1 these lump sum agreements. And that's very
2 different from the kind of agreement that they
3 want you to agree to. They want to suggest that
4 in 2005 the parties would have agreed to some
5 kind of running royalty that was paid for each
6 session of somebody using Google Earth.

7 What were the other things that he
8 looked at? He said well, look at the
9 contributions that Google makes to these
10 products, the millions and millions of dollars
11 that Google spends to buy data centers and all
12 of the information that stores them, all of the
13 money that is spent on the engineers who have
14 spent years and years of their lives working on
15 this product.

16 He also said look at the
17 difficulties in monetizing Google Earth. And
18 this was a very important factor. You heard
19 from Mr. Birch about the issues that Google has
20 had with Google Earth. It is an enormously
21 popular product, and it's really cool, but it
22 doesn't make a ton of money. The revenue has
23 been flat.

24 ACI kind of wants to mislead you a

1 little bit here, because they said look, when it
2 was introduced, there was Google Free so all of
3 a sudden it as zero dollars. That's not what
4 Mr. Birch said and that's not what Mr. Reed
5 said. They looked at the Google financial
6 records and they said there are these versions
7 that Google charged for, Pro and Enterprise.
8 Before Google started making those free, how
9 much did Google get? It was just a little under
10 \$250 million over the course of all those years.
11 That's real revenue. That's real money. That's
12 not profit, but that was real money. But it was
13 flat during the entire time, despite all of
14 their effort they couldn't grow it.

15 You also heard evidence about
16 their efforts to try to make ads through Google
17 Earth. And even though the licensing revenue
18 sounds kind of big, \$250 million is a lot of
19 revenue, but the ad revenue was much, much
20 smaller, \$5.6 million is what Mr. Birch said is
21 the total amount that they have spent.

22 Put it in the relevant period,
23 it's even less than that, so they stopped
24 including ads.

1 Now Google has taken the entire
2 product and moved it into Geo for good so all of
3 the versions are free. You have to consider
4 that factor of difficulty in monetizing it
5 before they would distribute it.

6 We also looked at whether ACI had
7 any licensing revenue. We found that they
8 didn't. ACI has not licensed the product. They
9 have never gotten any money for that patent.
10 They said let's look at whether they have any
11 competitive products. And the answer is they
12 don't. You saw the testimony of Mr. Andreovits
13 by video, they don't have and never had a
14 competitive product.

15 Let's look at the negotiating
16 history between the companies. And we used this
17 timeline to show you what were the parties
18 actually saying to each other. The very first
19 communication before Google had told ACI that
20 they didn't infringe, ACI said well, we'll take
21 a one to three percent royalty on patent related
22 revenues, and it's the midpoint of that, two
23 percent that Mr. Reed actually uses, two percent
24 of patent related revenues.

1 But then the parties continue to
2 negotiation and it turns out they were willing
3 to take even less. And importantly, Google,
4 because remember, you have to consider what both
5 of the parties would have done, Google said it
6 would not have paid more than a million dollars
7 for that patent even if it was ironclad.

8 What was the response to
9 Mr. Reed's analysis of the lump sum royalty of
10 \$3 million? Mr. Nawrocki came and he put up
11 this slide and he showed you this royalty base
12 of 7.1 billion sessions, but he didn't give you
13 a royalty rate, and he didn't give you an
14 opinion on royalty damages.

15 All of this evidence about a rate
16 and this discussion about a rate and the damages
17 is something that their lawyers are making up.
18 You never heard a witness come and tell you what
19 would be a fair amount. You never heard an
20 expert telling you what would be a fair amount.
21 You never heard ACI tell you they were going to
22 get some money for 7.1 billion sessions.

23 ACI told you you should get paid
24 for every use of Google Earth. That's not true,

1 ACI doesn't get paid for every use of Google
2 Earth. They get paid for every use of the
3 invention. And there wasn't any use of the
4 invention.

5 Once you look at all the evidence,
6 you should find that Google Earth does not
7 infringe claim 1, and that claim 1 and the other
8 asserted claims are invalid.

9 Now, I'm going to get a chance to
10 come back and talk to you in just a few minutes
11 but I'm only going to be able to talk to you
12 about invalidity. I want you to understand when
13 I don't mention it, that doesn't mean that
14 infringement is important. The evidence that
15 you have shows that Google Earth operates
16 differently. When you look at that evidence, I
17 think you'll agree.

18 Thank you.

19 THE COURT: Thank you, Mr. Snyder.

20 Mr. Hawes.

21 MR. HAWES: Thank you, Your Honor.

22 So I got to see the trial made
23 graphics again. They did a good job with those
24 graphics. Little lines going here and there.

1 When you look at the graphics, it reflects
2 exactly what the lawyer says. The lines go to
3 the places the lawyers say the lines ought to
4 go. Is that a surprise? They made the
5 graphics. Of course they're going to reflect
6 what the lawyers say.

7 Can I have slide 23.

8 But what their witnesses say was
9 important for you in making your decision. Did
10 they say the authoritative source was trial made
11 graphics by the attorneys? Did they say look at
12 all the little boxes and how they fill in when a
13 graphics artist puts them together? That's not
14 what they had.

15 Both Mr. Birch and Dr. Goodchild
16 said the ultimate authority for you to make a
17 decision on what Google Earth does is the source
18 code. And that's an admission. They knew they
19 didn't have the source code. So when they said
20 that, they had to say that, because they know
21 it's the source code that makes it work.

22 So we have Dr. Castleman get up
23 and walk through the source code with you. You
24 remember that? Google's attorney might tell you

1 he really didn't do it. You were here for
2 Dr. Castleman walking through that source code
3 with you, I'm sure you remember it. He went
4 through every step. He showed you the files,
5 the modules and the comments of engineers of
6 Google, the engineers who didn't come here to
7 speak with you, the comments of those engineers
8 talking about how every step was done.

9 When you weigh the infringement
10 decision in the case, there shouldn't be a
11 question of whether the authoritative source
12 that witnesses agree outweighs trial made
13 graphics. You should go with the source code.

14 Now, we also heard a little bit
15 about how well, Stephen Lau was there, there was
16 TerraVision. Stephen Lau was there, you heard
17 everyone say, he was at Siggraph 95. No
18 problem, he was there.

19 TerraVision had a booth. That's
20 true. But the issue is what was the TerraVision
21 that was on display. And we know that if they
22 had actually brought, shown us the source code
23 or at least talked about the source code and
24 what it showed. And they both had it, and they

1 didn't show it to you. They didn't even explain
2 it or talk about what it showed. Instead they
3 take these papers over a year-and-a-half, and
4 they say, well, it's kind of all these papers.
5 We showed when we questioned Dr. Goodchild and
6 Mr. Lau that the papers didn't agree, so how do
7 you know what was at this booth at Siggraph 95
8 when the papers don't agree, when Mr. Lau and
9 Dr. Goodchild had the code and didn't bring it
10 here for you, how do we know. How do we know
11 that's clear and convincing evidence that allows
12 us to second guess a patent that was triple
13 checked.

14 We heard that the patent office
15 didn't get to hear Mr. Lau on the stand. That's
16 true. That just happened yesterday, obviously
17 the patent office didn't get to see that. But
18 when I put up the patent, and I think it's slide
19 number five, let's see if I am close on that.
20 No, back one. There we go.

21 That last one, that's a deposition
22 of Stephen Lau talking about TerraVision. Now,
23 maybe his story has changed, I can't say. But
24 the patent office certainly can did get to see

1 what Stephen Lau had to say about TerraVision
2 when they granted this patent. They saw it
3 right there, right below where they got to see
4 what the CD-ROM for Siggraph 95, when they got
5 to see the article about the TerraVision product
6 and all the SRI stuff, they got to see that,
7 that's what was checked by the patent office
8 when they were doing their checks.

9 Keep that in mind when you're
10 deciding whether there was clear and convincing
11 evidence with what Mr. Lau says now compared to
12 what he said then.

13 We still haven't heard about the
14 2006 strategy document. Can we get the front
15 page of the 2006 strategy document. I think
16 it's about four or five ahead. Couple more.
17 Got to get past the zero dollars. Three or four
18 more.

19 You know the 2006 strategy
20 document, I have talked to you about it before.
21 We still at this point in the case, at the end
22 of the case, even with our closing argument out
23 of the way, they won't discuss their internal
24 strategy. They won't tell you about what Google

1 really thought about the value of Google Earth.
2 They just won't talk about it.

3 I know it's confidential, and I'm
4 not going to turn the page so I have to go flip
5 the paper. But you have seen it. You have seen
6 how they use users and how that was in their
7 words their overarching investment focus, that
8 was the reason they invest was for users and
9 usage.

10 Mr. Reed wants you to ignore that.
11 He wants you to do something else on reasonable
12 royalty. Why won't they talk about their
13 internal strategy documents, their financial
14 support code. Because it supports a royalty on
15 the use. That's way. It says they would invest
16 based on usage, so they don't want to talk about
17 it, they just ignore.

18 You don't have to ignore it. The
19 Judge has told you, but will give you the
20 instructions again with how to determine damages
21 and you can take it into account in deciding
22 what the proper reasonable royalty is for the
23 use made of the invention.

24 Could we get slide 62, please.

1 There it is. That's the investment focus. It
2 has not been discussed once by Google. That
3 doesn't mean that you can ignore it, because
4 it's the only Google internal document in the
5 case that tells you how Google would have
6 decided this, if they had been a willing
7 licensor.

8 You heard him say in 2006, Google
9 wasn't offering anything. Google was saying
10 it's nice to have patent. Remember, both
11 experts agreed, you have to assume the patent is
12 valid. You have to assume it's infringed. You
13 have to assume it's that terrifying situation
14 Mr. Jones described for you, when you realized
15 you're using someone else's patent for this
16 product that you expect to sell millions and
17 billions.

18 In fact, I used the word sell, not
19 correct, Google Earth for free, but that's
20 Google's choice, not ACI's choice. ACI didn't
21 say go use our invention and give it away for
22 free. They didn't have that option, that was
23 Google's choice. Because of the way the Google
24 model works, Google knew they would be more

1 profitable by bringing in their users, it's in
2 their own documents and Google refuses, refuses
3 to talk about it.

4 Let's talk a little bit about the
5 T_Vision paper. Now, you saw Mr. Lau hold up a
6 CD-ROM. He did, he pulled up the CD-ROM, that's
7 true. Their testimony from the inventors is
8 they don't remember that being distributed at
9 the conference, that was given to the patent
10 office. There is not evidence sufficient for
11 you to find by clear and convincing evidence
12 that the patent office got it wrong. There is a
13 disagreement about that and there is no clear
14 and convincing evidence, you saw the witness, he
15 put up there, and Google's lawyer had to admit,
16 the witness said generally speaking, he was
17 talking about twenty years, he said well, most
18 of the time, you also heard other witnesses say
19 some years they didn't get it out to attendees,
20 and no witness, except Mr. Lau who is being paid
21 by Google at \$450 an hour said I got the
22 materials.

23 You know what he actually
24 testified. It was kind of interesting. He said

1 all attendees got the materials, as though
2 Mr. Lau hung out at the registration desk and
3 watched and made sure. It was kind of odd. He
4 didn't say I got them, he claimed that all
5 attendees got them, something he couldn't
6 possibly have known. That's his testimony, and
7 obviously you can consider it.

8 You can also consider the
9 testimony of the other witnesses who didn't
10 remember getting it and the fact that Mr. Lau is
11 being paid \$450 an hour when he said it.

12 What about the T_Vision papers.
13 Can we go to the rebuttal slide, please. The
14 big issue here is that Dr. Goodchild wants to
15 simplify things. Do you remember that? He
16 wants to say well, I'm going to read things in.
17 If you read the instructions carefully, that you
18 cannot do -- you can't read things into the
19 publication. You can't say well, I think people
20 would understand. You've got to show where it
21 is.

22 And if you remember, if we go
23 forward a slide, he said -- actually let's go
24 forward three to his chapter book, maybe one

1 more, we'll get there. There it is.

2 You'll remember years after what
3 he now says was this disclosing paper that said
4 the whole thing, he said that previous
5 generations of developers have seen insuperable
6 challenges, and he included the very challenges
7 in the '550 patent, feeding vast amounts of data
8 through comparatively limited internet pipes.
9 Remember the discussion in the patent, that's
10 why you subdivide, that's why you have the
11 repetitive step because you can't get enough
12 data to go through and do the whole thing at
13 once.

14 These challenges are still there
15 years later. He's now telling you these were
16 all solved by the paper on the Siggraph
17 conference CD. It doesn't make any sense. It's
18 not clear and convincing evidence for you to
19 second guess the patent office to say no, this
20 patent is still good, we have looked at that,
21 still good patent.

22 They have to show by clear and
23 convincing evidence if they want to you second
24 guess the patent office and they haven't shown

1 that.

2 I ask you to be careful with your
3 verdict. Look at the instructions carefully and
4 make a good decision for this dispute which is
5 in your hands at this point.

6 Thank you.

7 THE COURT: Thank you, Mr. Hawes.

8 Mr. Snyder.

9 MR. SNYDER: Thank you, Your
10 Honor.

11 ACI wants you to just defer to the
12 Patent and Trademark Office. The Patent and
13 Trademark Office looked at it, they issued this
14 patent and so you shouldn't pay any more
15 attention to it, you should just go along. But
16 the Judge has instructed you -- the Court has
17 instructed you and the law is that the patent is
18 presumed valid, but not all patents are valid.
19 That's why you're here. And that's why we
20 presented evidence. That's why we showed you
21 the documents and that is why we brought the
22 witnesses so that you could hear them.

23 And after Doctor Goodchild explained how
24 the T_Vision system and that paper shows each and

1 every one of those elements, what
2 was the evidence that ACI put on? Did they
3 bring back Doctor Castleman and say, Doctor
4 Goodchild is mistaken, that is not what the
5 patent says or the paper says? No. Did they
6 bring back one of the inventors? Two of them
7 had testified. Did they bring one of or both of
8 them back and have them say -- and remember
9 their authors of the paper. Did they say nope,
10 he misunderstands the paper, that is not how it
11 works, that's not what we meant, that is not
12 what it says? No. What was the evidence that
13 they asked you to rely on to contradict Doctor
14 Goodchild's conclusions? There isn't any.

15 It's even thinner when we get to
16 the TerraVision system. Mr. Lau came and
17 explained to you his project. He came to you
18 and explained his and Mr. Leclerc's work and
19 said this is how it works and it's accurately
20 described in these various papers. This was the
21 system that we put on public display in 1994 and
22 1995. If they wanted to ask him about the
23 source code, they could have done it. He was
24 right there. He said he wrote 80 or 90 percent

1 of it. Doctor Goodchild came and he said if you
2 look at what they did and how it's described, it
3 invalidates these claims. And after Mr. Lau
4 testified and after Doctor Goodchild testified,
5 what is the evidence that ACI wants you to rely
6 on to contradict them? There isn't any. They
7 didn't have Doctor Castleman come back and say
8 that Mr. Lau's mistaken. They didn't have
9 Doctor Castleman come back and say Doctor
10 Goodchild's got it wrong. They just want to
11 argue to you and they want to tell you just
12 trust the Patent and Trademark Office. Don't do
13 your job.

14 Your job is to look at the
15 evidence independently. I have great confidence
16 that you're going to do your job and look at the
17 evidence. And when you look at all of the
18 evidence, you will come to the conclusion that
19 Google Earth does something different than is
20 described by the patent. It does not infringe.
21 And when you look at the evidence, you will
22 conclude that the claim 1, 3, 14 and 28 are
23 invalid as anticipated or obvious. We've been
24 telling ACI for 10 years that Google does not

1 infringe this patent and that it has problems.
2 And now we've given you that evidence and we
3 hope that you will agree with us based on your
4 review of that evidence. Thank you very much.

5 THE COURT: Thank you, Mr. Snyder.
6 Now, I'm going to give you some final
7 instructions, members of the jury and you will
8 go back to the jury room and select your foreman
9 and deliberate on a verdict. And when you get
10 back there, you will find there was a verdict
11 form and there's a copy of the instructions for
12 each one of you.

13 You must perform your duties as
14 jurors without bias or prejudice as to any
15 party. The law does not permit you to be
16 controlled by sympathy, prejudice or public
17 opinion. All parties expect that you will
18 carefully and impartially consider all the
19 evidence, follow the law as I have given it to
20 you and reach a just verdict regardless of the
21 consequences.

22 It is your sworn duty as jurors to
23 discuss the case with one another in an effort
24 to reach agreement if you can do so. Each of

1 you must decide the case for yourself, but only
2 after full consideration of the evidence with
3 the other members of the jury. While you are
4 discussing the case do not hesitate to
5 re-examine your own opinion and change your mind
6 if you become convinced that you are wrong.
7 However, do not give up your honest beliefs
8 solely because the others think differently, or
9 merely to finish the case.

10 Remember that in a very real way
11 you are the judges of the facts. Your only
12 interest is to seek the truth from the evidence
13 in the case. You should consider and decide
14 this case as a dispute between persons of equal
15 standing in the community, of equal worth, and
16 holding the same or similar stations in life. A
17 corporation is entitled to the same fair trial
18 as a private individual. All persons, including
19 corporations and other organizations stand equal
20 before the law and are to be treated as equals.

21 When you retire to the jury room
22 to deliberate on your verdict, you may take this
23 charge with you as well as exhibits which the
24 Court has admitted into evidence.

1 Select your foreperson and conduct
2 your deliberations. If you recess during your
3 deliberations, follow all of the instructions
4 that the Court has given you regarding your
5 conduct during the trial. After you have
6 reached your unanimous verdict, your foreperson
7 is to fill in on the verdict form your answers
8 to the questions. Do not reveal your answers
9 until such time as you are discharged unless
10 otherwise directed by me. You must never
11 disclose to anyone, not even to me, your
12 numerical division on any questions.

13 Any notes that you have taken
14 during this trial are only aids to memory. If
15 your memory should differ from your notes, then
16 you should rely on your memory and not on your
17 notes. The notes are not evidence. A juror who
18 has not taken notes should rely on his or her
19 independent recollection of the evidence and
20 should not be unduly influenced by notes of
21 other jurors. Notes are not entitled to any
22 greater weight than the recollection or
23 impression of each juror about the testimony.

24 During your deliberations, you

1 must not communicate with or provide any
2 information to anyone by any means about this
3 case. Except to the extent I instruct you that
4 you may review certain exhibits on a computer
5 provided to you, you may not use any electronic
6 device, or media, such as the telephone, a cell
7 phone, smart phone, iPhone, Blackberry, or
8 computer, the internet, any internet service,
9 any text or instant messages service, any
10 internet chatroom, blog or website such as
11 Facebook, MySpace, LinkedIn, YouTube or Twitter,
12 to communicate to anyone any information about
13 this case or to conduct any research about this
14 case until I accept your verdict. In other
15 words, you cannot talk to anyone on the phone,
16 correspond with anyone or electronically
17 communicate with anyone about this case. You
18 can only discuss the case in the jury room with
19 your fellow jurors during deliberations.

20 If you want to communicate with me
21 at any time, please give a written message or
22 question to the bailiff, who will bring it to
23 me. I will then respond as promptly as possible
24 either in writing or by having you brought into

1 the courtroom so that I can address you orally.
2 I will always first disclose to the attorneys
3 your question and my response before I answer
4 your question.

5 Any exhibits used in the trial
6 will be available to you during your
7 deliberations. A typewritten copy of the
8 testimony will not be available for your use
9 during the deliberations, although you can
10 request a particular portion of a witness's
11 testimony to be read back to you. It is
12 difficult and time consuming for the reporter to
13 read back lengthy portions of the testimony, so
14 the opportunity to have testimony read back is
15 quite limited. After you have reached a
16 verdict, you are not required to talk with
17 anyone about the case unless the Court orders
18 otherwise. You may now retire to the jury room
19 to deliberate.

20 THE COURT: Be seated please. We
21 have to swear the security officer.

22 (Court officer sworn.)

23 THE COURT: Thank you. All right.
24 Now, I suggest that we recess for lunch for one

1 hour and then again -- begin the bench trial at
2 1:30. Is there anything else that counsel has?

3 MR. PARTRIDGE: Yes, Your Honor.
4 We had a conversation about the bench trial and
5 we've agreed we'll avoid repetitive testimony
6 from the jury trial this week and therefore we
7 think the bench trial should take an hour and a
8 half or so. It's hard to predict it exactly.
9 And our preference would be to start at 2, if
10 that would be acceptable to Your Honor.

11 THE COURT: That would be fine.

12 MS. WILLIAMSON: And as part of
13 that process, Your Honor, even though there is
14 some new evidence that has been designated from
15 depositions, we don't intend to play or read
16 that, we simply will submit it to the Court for
17 its consideration.

18 THE COURT: That's fine.

19 MR. PARTRIDGE: Thank you.

20 THE COURT: We'll resume at 2
21 o'clock. Hold on just one moment. I want to
22 talk to my clerk hear. I just want to say one
23 other thing before we break, and that is that I
24 think this case has been very professionally

1 tried on both sides and I think it's an
2 admirable example of lawyering and whatever way
3 the verdict comes out, I appreciate what all of
4 you have done and you should feel as though
5 you've performed admirably for the profession
6 and I appreciate it.

7 MR. HAWES: Thank you.

8 MR. SNYDER: Thank you, Your
9 Honor.

10 THE COURT: All right. We'll
11 recess until 2 o'clock then.

12 (Luncheon recess.)

13 THE COURT: Be seated please. As
14 you know the jury has reached a /SRERT /EUBGT.
15 Is there anything we need to discuss before we
16 bring the jury back.

17 MR. PARTRIDGE: Nothing from the
18 Plaintiff, Your Honor.

19 MR. SNYDER: Nothing from Google,
20 Your Honor.

21 THE COURT: Thank you.

22 (Jury enters.)

23 THE COURT: And who is the
24 foreperson for the jury?

1 FOREPERSON: I am.

2 THE COURT: Has the jury reached a
3 verdict in this case?

4 FOREPERSON: We have, Your Honor.

5 THE COURT: Would you please hand
6 the verdict to the court deputy. I will now
7 read the verdict. The first question is do you
8 find that ACI has proven by a preponderance of
9 the evidence that Google's use of the accused
10 Google Earth products infringes the following
11 claims of U.S. Patent No. RE44550? Claim 1, no.
12 Claim 3, no. Claim 14, no. Claim 28, no.

13 Question 2. Do you find that
14 Google has proven by clear and convincing
15 evidence that SRI's TerraVision system was
16 publically used before December 17, 1995?
17 Answer, yes.

18 Question #3. If you answered yes
19 to Question #2, do you find that Google has
20 proven by clear and convincing evidence that SRI
21 TerraVision anticipates, that is constitutes the
22 public use of any of the following claims of
23 U.S. Patent No. RE44550? Claim 1, yes. Claim
24 3, yes. Claim 14, yes. Claim 28, yes.

1 Question #4. If you answered yes
2 to Question #2 and no to Question #3 -- and
3 since the jury answered yes to both questions,
4 it did not answer Question #4.

5 Question #5. Do you find that
6 Google has proven by clear and convincing
7 evidence that the T_Vision paper was a printed
8 publication before December 17th, 1995? Answer,
9 yes.

10 Question #6. If you answered yes
11 to Question #5, do you find that Google has
12 proven by clear and convincing evidence that the
13 T_Vision paper anticipates any of the following
14 claims of U.S. Patent No. RE44550: Claim 1,
15 yes. Claim 14, yes. Claim 28, yes.

16 And then Question #7 is not
17 answered.

18 Question #8, if you answered yes
19 to Question #5, do you find that Google has
20 proven by clear and convincing evidence that
21 Claim 3 of U.S. Patent No. RE44550 is invalid as
22 obvious in view of the combination of the
23 T_Vision paper, the Global Mapping patent and
24 the knowledge of a person of ordinary skill in

1 the art at the time of the alleged invention?

2 Answer, yes.

3 And Question 9 is not answered as
4 being inapplicable.

5 Signed May 27th, 2016. Foreperson
6 Michael Brothers.

7 Is there any request to poll the
8 jury?

9 MR. PARTRIDGE: No, Your Honor.

10 THE COURT: Now, members of the
11 jury, by general practice of the Court and the
12 rules of the Court, I'm not permitted to comment
13 on your verdict, but I am allowed to comment on
14 your service. And I want to congratulate you on
15 having worked very hard and attentively and
16 having put in great effort and serious
17 mindedness into this project. The parties thank
18 you. The Court thanks you and I congratulate
19 you for your service. It's another
20 demonstration that the founding fathers had a
21 good idea when they put their trust in the
22 common sense of the American jury and I thank
23 you for participating in this with us. Now I'm
24 going to allow you to go back to the jury room.

1 If you wait just a few minutes, I will come in
2 and eventually discharge you and then you'll be
3 free to go. Thank you again for your service.
4 I'll see you in a few minutes.

5 (Jury exits.)

6 THE COURT: Be seated, please.
7 Thank you all again. Eventually I will enter
8 judgment on the verdict. I'm not sure, in light
9 of the bench trial, whether that's appropriate
10 to do now. The parties may or may not have a
11 view about that. And then of course once I do
12 enter a judgment, there will be a 28-day period
13 for post trial motions and I'd be willing to
14 extend that, but the time won't begin to run
15 until I enter a judgment.

16 So now I'm going to go and meet
17 with the jury for a few minutes and then we have
18 the bench trial. Mr. Snyder?

19 MR. SNYDER: Your Honor, the
20 subject matter of the bench trial are
21 affirmative defenses only, and I believe that
22 they are moot in light of the jury's verdict.

23 MR. PARTRIDGE: That's correct,
24 Your Honor.

1 THE COURT: Okay. So we will,
2 what, dismiss the claims of laches and
3 inequitable conduct on the grounds of mootness,
4 is that what you'd like me to do?

5 MR. SNYDER: They are not claims,
6 they are affirmative defenses.

7 THE COURT: Affirmative defenses,
8 so we don't have to dismiss any claims. We'll
9 treat those as moot and that will put me in a
10 position, then, to enter judgment on the
11 verdict, which I will do.

12 Is there anything else that we
13 need to accomplish today?

14 MR. PARTRIDGE: Nothing from the
15 Plaintiff, Your Honor. Thank you for your work
16 on this case. We appreciate it.

17 THE COURT: Thank you.

18 MR. SNYDER: Nothing from Google,
19 Your Honor.

20 THE COURT: And again, I thank all
21 counsel. I thank our court reporters and the
22 court staff. You've been enormously helpful and
23 I very much appreciate it. And it's been a
24 pleasure for me to be able to participate in

1 this. So with that, I think we're adjourned.

2 Thank you.

3 (Court recessed at 2:35 p.m.)

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1 State of Delaware)
2)
3 New Castle County)
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5 CERTIFICATE OF REPORTER
6

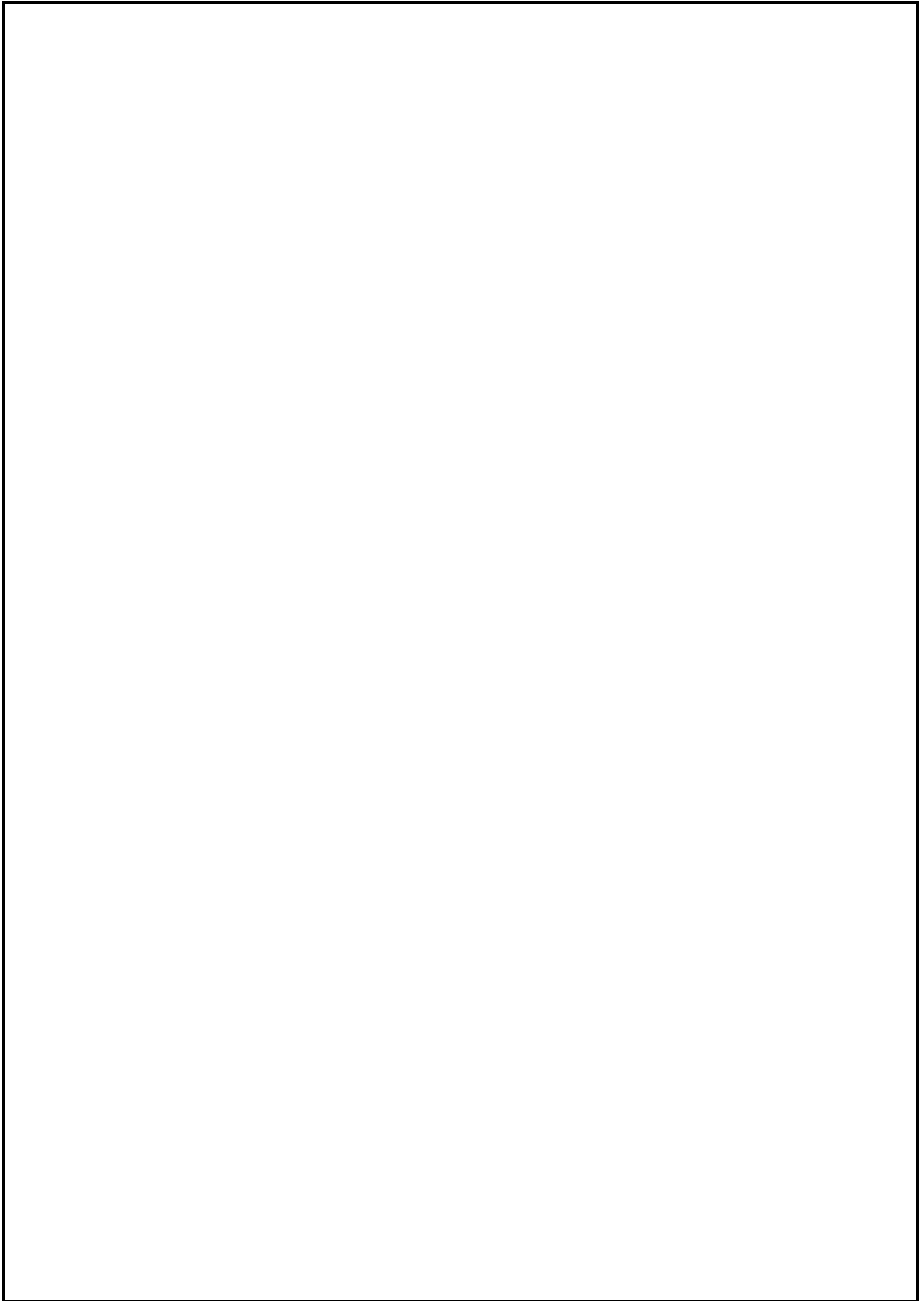
7 I, Dale C. Hawkins, Registered Merit
8 Reporter, Certified Shorthand Reporter, and Notary
9 Public, do hereby certify that the foregoing record,
10 Pages 1373 to 1567 inclusive, is a true and accurate
11 transcript of my stenographic notes taken on May 27,
12 2016, in the above-captioned matter.
13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 27th day of May 2016, at
16 Wilmington.
17

18
19 /s/ Dale C. Hawkins

20 Dale C. Hawkins, RMR
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